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CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1844

Introduced by Assembly Member Fletcher

(Principal coauthors: Assembly Members Anderson, Block, Garrick, Gilmore, Nielsen, and Salas)

~~(Principal coauthor: Senator Alquist)~~

(Principal coauthors: Senators *Alquist*, Hollingsworth, and Wyland)

(Coauthors: Assembly Members Adams, Arambula, Bill Berryhill, Tom Berryhill, Blakeslee, Bradford, Buchanan, Caballero, Charles Calderon, Chesbro, Conway, Cook, Coto, Davis, De León, DeVore, Emmerson, Fong, Fuller, Gaines, Galgiani, Hagman, Hall, Harkey, Hill, Huber, Huffman, Jeffries, Knight, Lieu, Logue, Ma, Mendoza, Miller, Nava, Nestande, Niello, Norby, Portantino, Silva, Smyth, Solorio, Audra Strickland, Swanson, Torlakson, Torres, Torrico, Tran, and Villines)

(Coauthors: Senators Cogdill, Correa, Cox, Denham, Dutton, Harman, Huff, Maldonado, and Runner)

February 12, 2010

An act to amend Sections 220, 236.1, 264, 264.1, 286, 288, 288a, 289, 290.04, 290.05, 290.06, 290.46, 666, 667.61, 1203.067, 2962, 3000, 3000.1, 3008, and 13887 of, and to add Sections 290.09, 3053.8,

and 9003 to, the Penal Code, and to amend Section 18846.3 of the Revenue and Taxation Code, relating to sex crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1844, as amended, Fletcher. Sex offenders: punishment: parole.

Under existing law, an assault with the intent to commit mayhem, rape, sodomy, oral copulation, or with the intent to commit, by force, rape, spousal rape, or sexual penetration in concert with another, is punishable by imprisonment in the state prison for 2, 4, or 6 years, except as specified.

This bill would provide that an assault of a person under 18 years of age with the intent to commit rape, sodomy, oral copulation, or with the intent to commit, by force, rape, spousal rape, or sexual penetration in concert with another, would be punishable by imprisonment in state prison for 5, 7, or 9 years.

Under existing law, any person who deprives or violates the personal liberty of another with the intent to effect or maintain a felony violation of specified sex crimes, extortion, or to obtain forced labor or services, is guilty of human trafficking. Existing law provides that a violation of this provision where the victim of the trafficking was under 18 years of age at the time of the commission of the offense is punishable by imprisonment in the state prison for 4, 6, or 8 years.

This bill would provide that any person who commits human trafficking involving a commercial sex act where the victim of the human trafficking was under 18 years of age at the time of the commission of the offense shall be punished in addition by a fine of not more than \$100,000, to be used as specified.

Under existing law, rape, sodomy accomplished against the victim's will, oral copulation accomplished against the victim's will, and sexual penetration accomplished against the victim's will is punishable by imprisonment in state prison for 3, 6, or 8 years. Rape, sodomy, and oral copulation committed in concert with another is punishable by imprisonment in the state prison for 5, 7, or 9 years.

This bill would provide that the punishment for these specified crimes upon a child who is under 14 years of age is punishable by imprisonment in state prison for 9, 11, or 13 years, and if committed upon a minor who is 14 years of age or older is punishable by imprisonment in state prison for 7, 9, or 11 years. This bill would provide that if these crimes are committed in concert with another person upon a child who is under

14 years of age they are punishable in state prison for 10, 12, or 14 years and if committed in concert upon a minor who is 14 years of age or older by imprisonment for 7, 9, or 11 years. By increasing the punishment for crimes, this bill would impose a state-mandated local program.

Under existing law, a person who commits an act of rape, rape or sexual penetration in concert, sodomy, oral copulation, or sexual penetration, when the act is committed upon a child who is under 14 years of age and 7 or more years younger than the person, is guilty of aggravated sexual assault of a child. Aggravated sexual assault of a child under these circumstances is punishable by imprisonment in state prison for 15 years to life.

This bill would provide that it does not preclude prosecution under this existing law.

Under existing law, a person who commits any lewd or lascivious act upon a child who is under 14 years of age by use of force or fear is guilty of a felony punishable by imprisonment in state prison for 3, 6, or 8 years.

This bill would increase the punishment for this crime to imprisonment in the state prison for 5, 8, or 10 years. By increasing the punishment for a crime, this bill would impose a state-mandated local program.

Under existing law, a person who commits any lewd or lascivious act upon a dependent person, as defined, by use of force or fear is guilty of a felony punishable by imprisonment in state prison for 3, 6, or 8 years.

This bill would increase the punishment for this crime to imprisonment in the state prison for 5, 8, or 10 years. By increasing the punishment for a crime, this bill would impose a state-mandated local program.

Existing law, as amended by Proposition 83 of the November 7, 2006, statewide general election, requires a person convicted of certain felonies under specified circumstances to be committed to prison for a term of years to life.

This bill would provide that these felonies committed under the above-specified circumstances upon a victim who is a child under 14 years of age shall be punished by imprisonment in state prison for life without the possibility of parole if the offender is 18 years of age or older or 25 years to life if the offender is under 18 years of age. This bill would add as a circumstance the infliction of bodily harm, as defined, on a victim who is a child under 14 years of age to the list of specified circumstances that would result in this imprisonment.

This bill would provide that when rape, spousal rape, rape in concert, or sexual penetration, sodomy, or oral copulation committed against the victim's will are committed under 2 of a specified list of circumstances, upon a minor 14 years of age or older, the punishment shall be imprisonment in state prison for life without the possibility of parole if the offender is 18 years of age or older or 25 years to life if the offender is under 18 years of age, or for 25 years to life if committed under one of the specified circumstances.

Under existing law, a person convicted of certain felony sex offenses shall be committed to prison for a term of 15 years to life if during the commission of the felony the defendant inflicted great bodily injury on the victim.

This bill would provide that any person who is convicted of certain sex offenses under specified circumstances, upon a victim who is a child under 14 years of age, shall be punished by imprisonment in the state prison for 25 years to life. The bill would provide a life term of imprisonment for any person convicted of a lewd or lascivious act where he or she inflicted bodily harm.

Existing law makes it unlawful for a person who is required to register as a sex offender to reside within 2,000 feet of a public or private school, or park where children regularly gather. Existing law also provides that any person required to register as a sex offender who comes into any school building or upon any school ground without lawful business and written permission is guilty of a misdemeanor.

This bill would make it a misdemeanor for a person who is on parole for specified sex offenses to enter any park where children regularly gather without express permission from the person's parole agent.

Under existing law a prisoner is generally released on parole for a period not exceeding 3 years, except that inmates sentenced for certain enumerated violent felonies are released on parole for a period not exceeding 5 years.

~~Under years.~~ Under existing law, the period of parole for an inmate who has received a life sentence for certain specified sex offenses is for a period not exceeding 10 years.

This bill would require lifetime parole for habitual sex offenders, persons convicted of kidnapping a child under 14 years of age with the intent to commit a specified sexual offense, and persons convicted of other specified sex crimes, including, among others, aggravated sexual assault of a child. The bill would, unless a longer period of parole applies, impose a 10-year parole period on inmates sentenced

~~for kidnapping~~ *for kidnapping* with the intent to commit specified sex offenses, specified lewd or lascivious acts, and other specified sexual offenses. The bill would impose a 20-year parole period on inmates convicted and required to register as sex offenders for rape, sodomy, lewd or lascivious acts, continuous sexual abuse of a child, and other specified sex crimes, in which one or more of the victims of the offense was a child under 14 years of age, as specified.

Existing law provides *that petty theft is a misdemeanor, except that every person who, having been convicted of petty theft, grand theft, auto theft, burglary, carjacking, robbery, or receiving stolen property; and having served time in a penal institution therefor, is subsequently convicted of petty theft, is punishable by imprisonment in the a county jail not exceeding one year, or in the state prison.*

This bill would require that most persons be convicted 3 or more times of a qualifying offense to be subject to imprisonment in the state prison for petty theft. Persons required to register as sex offenders, or with a prior serious or violent felony conviction, ~~or who have been previously sentenced under the 3 strikes law~~ *who have been convicted and imprisoned for the commission of specified crimes, including, among others, petty theft, auto theft, burglary, carjacking, or robbery,* would remain subject to imprisonment in the state prison with one prior qualifying offense.

Existing law provides that the sex offender risk assessment tool for use with selected populations shall be known as the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO). Existing law provides that the SARATSO for adult males required to register as sex offenders shall be the STATIC-99 risk assessment scale. Existing law requires the SARATSO Review Committee to determine whether the STATIC-99 should be supplemented with an actuarial instrument that measures dynamic risk factors or whether it should be replaced with a different risk assessment tool.

This bill would provide that the STATIC-99 shall be the SARATSO static tool for adult males. The bill would require the SARATSO Review Committee, on or before January 1, 2012, to select an actuarial instrument that measures dynamic risk factors and an actuarial instrument that measures risk of future sexual violence to be administered as specified. The bill would provide that persons who administer the dynamic SARATSO and the future violence SARATSO shall be trained, as specified. The bill would make other conforming changes.

Existing law provides that with respect to a person who has been convicted of specified sex crimes, the Department of Justice shall make available to the public via the department's Internet Web site certain identifying and criminal history information.

This bill would require the department to also make available the person's static SARATSO score and information on an elevated risk level based on the SARATSO future violence tool.

Existing law requires that persons convicted of certain sex crimes be evaluated by the county probation department and requires that if a defendant is granted probation, the court shall order the defendant to be placed in an appropriate treatment program designed to deal with child molestation or sexual offenders, if an appropriate program is available in the county.

This bill would remove the requirement that the defendant be placed in an appropriate treatment program but would instead impose specified conditions, including participation in an approved sex offender management program, on persons released on formal supervised probation for an offense requiring registration as a sex offender, as specified. By imposing additional requirements on county probation departments, this bill would impose a state-mandated local program. The bill would similarly require participation in an approved sex offender management program, as a condition of parole, for persons released on parole for an offense that requires registration as a sex offender, as specified.

Existing law requires that, as a condition of parole, prisoners who meet specified criteria be treated by the State Department of Mental Health. Existing law requires that prior to release on parole, these prisoners be evaluated, as specified. Existing law provides that only if both independent professionals who evaluate the prisoner, as required, concur with the chief psychiatrist's certification shall treatment by the department be required.

This bill would instead make these provisions applicable to the prisoner if at least one of the independent professionals concurs with the chief psychiatrist's certification.

Under the Personal Income Tax Law, individual taxpayers are allowed to contribute amounts in excess of their tax liability for the support of specified funds or accounts, including, among others, the California Sexual Violence Victim Services Fund. Existing law provides for the appearance of this fund on the tax return *form* until January 1, 2011, unless a later enacted statute deletes or extends that date.

This bill would delete the January 1, 2011, repeal date.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known as the Chelsea King
2 Child Predator Prevention Act of 2010.

3 SEC. 2. Section 220 of the Penal Code is amended to read:

4 220. (a) (1) Except as provided in subdivision (b), any person
5 who assaults another with intent to commit mayhem, rape, sodomy,
6 oral copulation, or any violation of Section 264.1, 288, or 289 shall
7 be punished by imprisonment in the state prison for two, four, or
8 six years.

9 (2) Except as provided in subdivision (b), any person who
10 assaults another person under 18 years of age with the intent to
11 commit rape, sodomy, oral copulation, or any violation of Section
12 264.1, 288, or 289 shall be punished by imprisonment in the state
13 prison for five, seven, or nine years.

14 (b) Any person who, in the commission of a burglary of the first
15 degree, as defined in subdivision (a) of Section 460, assaults
16 another with intent to commit rape, sodomy, oral copulation, or
17 any violation of Section 264.1, 288, or 289 shall be punished by
18 imprisonment in the state prison for life with the possibility of
19 parole.

20 SEC. 3. Section 236.1 of the Penal Code is amended to read:

21 236.1. (a) Any person who deprives or violates the personal
22 liberty of another with the intent to effect or maintain a felony
23 violation of Section 266, 266h, 266i, 267, 311.4, or 518, or to
24 obtain forced labor or services, is guilty of human trafficking.

1 (b) Except as provided in subdivision (c), a violation of this
2 section is punishable by imprisonment in the state prison for three,
3 four, or five years.

4 (c) A violation of this section where the victim of the trafficking
5 was under 18 years of age at the time of the commission of the
6 offense is punishable by imprisonment in the state prison for four,
7 six, or eight years.

8 (d) (1) For purposes of this section, unlawful deprivation or
9 violation of the personal liberty of another includes substantial
10 and sustained restriction of another's liberty accomplished through
11 fraud, deceit, coercion, violence, duress, menace, or threat of
12 unlawful injury to the victim or to another person, under
13 circumstances where the person receiving or apprehending the
14 threat reasonably believes that it is likely that the person making
15 the threat would carry it out.

16 (2) Duress includes knowingly destroying, concealing,
17 removing, confiscating, or possessing any actual or purported
18 passport or immigration document of the victim.

19 (e) For purposes of this section, "forced labor or services" means
20 labor or services that are performed or provided by a person and
21 are obtained or maintained through force, fraud, or coercion, or
22 equivalent conduct that would reasonably overbear the will of the
23 person.

24 (f) The Legislature finds that the definition of human trafficking
25 in this section is equivalent to the federal definition of a severe
26 form of trafficking found in Section 7102(8) of Title 22 of the
27 United States Code.

28 (g) (1) *In addition to the penalty specified in subdivision (c),*
29 *any person who commits human trafficking involving a commercial*
30 *sex act where the victim of the human trafficking was under 18*
31 *years of age at the time of the commission of the offense shall be*
32 *punished by a fine of not more than one hundred thousand dollars*
33 *(\$100,000).*

34 (2) *As used in this subdivision, "commercial sex act" means*
35 *any sexual conduct on account of which anything of value is given*
36 *or received by any person.*

37 (h) *Every fine imposed and collected pursuant to this section*
38 *shall be deposited in the Victim-Witness Assistance Fund to be*
39 *available for appropriation to fund services for victims of human*
40 *trafficking. At least 50 percent of the fines collected and deposited*

1 *pursuant to this section shall be granted to community-based*
2 *organizations that serve victims of human trafficking.*

3 ~~SEC. 3.~~

4 *SEC. 4.* Section 264 of the Penal Code is amended to read:

5 264. (a) Except as provided in subdivision (c), rape, as defined
6 in Section 261 or 262, is punishable by imprisonment in the state
7 prison for three, six, or eight years.

8 (b) In addition to any punishment imposed under this section
9 the judge may assess a fine not to exceed seventy dollars (\$70)
10 against any person who violates Section 261 or 262 with the
11 proceeds of this fine to be used in accordance with Section 1463.23.
12 The court shall, however, take into consideration the defendant's
13 ability to pay, and no defendant shall be denied probation because
14 of his or her inability to pay the fine permitted under this
15 subdivision.

16 (c) (1) Any person who commits rape in violation of paragraph
17 (2) of subdivision (a) of Section 261 upon a child who is under 14
18 years of age shall be punished by imprisonment in the state prison
19 for 9, 11, or 13 years.

20 (2) Any person who commits rape in violation of paragraph (2)
21 of subdivision (a) of Section 261 upon a minor who is 14 years of
22 age or older shall be punished by imprisonment in the state prison
23 for 7, 9, or 11 years.

24 (3) This subdivision does not preclude prosecution under Section
25 269, Section 288.7, or any other provision of law.

26 ~~SEC. 4.~~

27 *SEC. 5.* Section 264.1 of the Penal Code is amended to read:

28 264.1. (a) The provisions of Section 264 notwithstanding, in
29 any case in which the defendant, voluntarily acting in concert with
30 another person, by force or violence and against the will of the
31 victim, committed an act described in Section 261, 262, or 289,
32 either personally or by aiding and abetting the other person, that
33 fact shall be charged in the indictment or information and if found
34 to be true by the jury, upon a jury trial, or if found to be true by
35 the court, upon a court trial, or if admitted by the defendant, the
36 defendant shall suffer confinement in the state prison for five,
37 seven, or nine years.

38 (b) (1) If the victim of an offense described in subdivision (a)
39 is a child who is under 14 years of age, the defendant shall be

1 punished by imprisonment in the state prison for 10, 12, or 14
2 years.

3 (2) If the victim of an offense described in subdivision (a) is a
4 minor who is 14 years of age or older, the defendant shall be
5 punished by imprisonment in the state prison for 7, 9, or 11 years.

6 (3) This subdivision does not preclude prosecution under Section
7 269, Section 288.7, or any other provision of law.

8 ~~SEC. 5.~~

9 *SEC. 6.* Section 286 of the Penal Code is amended to read:

10 286. (a) Sodomy is sexual conduct consisting of contact
11 between the penis of one person and the anus of another person.
12 Any sexual penetration, however slight, is sufficient to complete
13 the crime of sodomy.

14 (b) (1) Except as provided in Section 288, any person who
15 participates in an act of sodomy with another person who is under
16 18 years of age shall be punished by imprisonment in the state
17 prison, or in a county jail for not more than one year.

18 (2) Except as provided in Section 288, any person over the age
19 of 21 years who participates in an act of sodomy with another
20 person who is under 16 years of age shall be guilty of a felony.

21 (c) (1) Any person who participates in an act of sodomy with
22 another person who is under 14 years of age and more than 10
23 years younger than he or she shall be punished by imprisonment
24 in the state prison for three, six, or eight years.

25 (2) (A) Any person who commits an act of sodomy when the
26 act is accomplished against the victim's will by means of force,
27 violence, duress, menace, or fear of immediate and unlawful bodily
28 injury on the victim or another person shall be punished by
29 imprisonment in the state prison for three, six, or eight years.

30 (B) Any person who commits an act of sodomy with another
31 person who is under 14 years of age when the act is accomplished
32 against the victim's will by means of force, violence, duress,
33 menace, or fear of immediate and unlawful bodily injury on the
34 victim or another person shall be punished by imprisonment in the
35 state prison for 9, 11, or 13 years.

36 (C) Any person who commits an act of sodomy with another
37 person who is a minor 14 years of age or older when the act is
38 accomplished against the victim's will by means of force, violence,
39 duress, menace, or fear of immediate and unlawful bodily injury

1 on the victim or another person shall be punished by imprisonment
2 in the state prison for 7, 9, or 11 years.

3 (D) This paragraph does not preclude prosecution under Section
4 269, Section 288.7, or any other provision of law.

5 (3) Any person who commits an act of sodomy where the act
6 is accomplished against the victim's will by threatening to retaliate
7 in the future against the victim or any other person, and there is a
8 reasonable possibility that the perpetrator will execute the threat,
9 shall be punished by imprisonment in the state prison for three,
10 six, or eight years.

11 (d) (1) Any person who, while voluntarily acting in concert
12 with another person, either personally or aiding and abetting that
13 other person, commits an act of sodomy when the act is
14 accomplished against the victim's will by means of force or fear
15 of immediate and unlawful bodily injury on the victim or another
16 person or where the act is accomplished against the victim's will
17 by threatening to retaliate in the future against the victim or any
18 other person, and there is a reasonable possibility that the
19 perpetrator will execute the threat, shall be punished by
20 imprisonment in the state prison for five, seven, or nine years.

21 (2) Any person who, while voluntarily acting in concert with
22 another person, either personally or aiding and abetting that other
23 person, commits an act of sodomy upon a victim who is under 14
24 years of age, when the act is accomplished against the victim's
25 will by means of force or fear of immediate and unlawful bodily
26 injury on the victim or another person, shall be punished by
27 imprisonment in the state prison for 10, 12, or 14 years.

28 (3) Any person who, while voluntarily acting in concert with
29 another person, either personally or aiding and abetting that other
30 person, commits an act of sodomy upon a victim who is a minor
31 14 years of age or older, when the act is accomplished against the
32 victim's will by means of force or fear of immediate and unlawful
33 bodily injury on the victim or another person, shall be punished
34 by imprisonment in the state prison for 7, 9, or 11 years.

35 (4) This subdivision does not preclude prosecution under Section
36 269, Section 288.7, or any other provision of law.

37 (e) Any person who participates in an act of sodomy with any
38 person of any age while confined in any state prison, as defined
39 in Section 4504, or in any local detention facility, as defined in

1 Section 6031.4, shall be punished by imprisonment in the state
2 prison, or in a county jail for not more than one year.

3 (f) Any person who commits an act of sodomy, and the victim
4 is at the time unconscious of the nature of the act and this is known
5 to the person committing the act, shall be punished by
6 imprisonment in the state prison for three, six, or eight years. As
7 used in this subdivision, “unconscious of the nature of the act”
8 means incapable of resisting because the victim meets one of the
9 following conditions:

10 (1) Was unconscious or asleep.

11 (2) Was not aware, knowing, perceiving, or cognizant that the
12 act occurred.

13 (3) Was not aware, knowing, perceiving, or cognizant of the
14 essential characteristics of the act due to the perpetrator’s fraud in
15 fact.

16 (4) Was not aware, knowing, perceiving, or cognizant of the
17 essential characteristics of the act due to the perpetrator’s fraudulent
18 representation that the sexual penetration served a professional
19 purpose when it served no professional purpose.

20 (g) Except as provided in subdivision (h), a person who commits
21 an act of sodomy, and the victim is at the time incapable, because
22 of a mental disorder or developmental or physical disability, of
23 giving legal consent, and this is known or reasonably should be
24 known to the person committing the act, shall be punished by
25 imprisonment in the state prison for three, six, or eight years.
26 Notwithstanding the existence of a conservatorship pursuant to
27 the Lanterman-Petris-Short Act (Part 1 (commencing with Section
28 5000) of Division 5 of the Welfare and Institutions Code), the
29 prosecuting attorney shall prove, as an element of the crime, that
30 a mental disorder or developmental or physical disability rendered
31 the alleged victim incapable of giving consent.

32 (h) Any person who commits an act of sodomy, and the victim
33 is at the time incapable, because of a mental disorder or
34 developmental or physical disability, of giving legal consent, and
35 this is known or reasonably should be known to the person
36 committing the act, and both the defendant and the victim are at
37 the time confined in a state hospital for the care and treatment of
38 the mentally disordered or in any other public or private facility
39 for the care and treatment of the mentally disordered approved by
40 a county mental health director, shall be punished by imprisonment

1 in the state prison, or in a county jail for not more than one year.
2 Notwithstanding the existence of a conservatorship pursuant to
3 the Lanterman-Petris-Short Act (Part 1 (commencing with Section
4 5000) of Division 5 of the Welfare and Institutions Code), the
5 prosecuting attorney shall prove, as an element of the crime, that
6 a mental disorder or developmental or physical disability rendered
7 the alleged victim incapable of giving legal consent.

8 (i) Any person who commits an act of sodomy, where the victim
9 is prevented from resisting by an intoxicating or anesthetic
10 substance, or any controlled substance, and this condition was
11 known, or reasonably should have been known by the accused,
12 shall be punished by imprisonment in the state prison for three,
13 six, or eight years.

14 (j) Any person who commits an act of sodomy, where the victim
15 submits under the belief that the person committing the act is the
16 victim's spouse, and this belief is induced by any artifice, pretense,
17 or concealment practiced by the accused, with intent to induce the
18 belief, shall be punished by imprisonment in the state prison for
19 three, six, or eight years.

20 (k) Any person who commits an act of sodomy, where the act
21 is accomplished against the victim's will by threatening to use the
22 authority of a public official to incarcerate, arrest, or deport the
23 victim or another, and the victim has a reasonable belief that the
24 perpetrator is a public official, shall be punished by imprisonment
25 in the state prison for three, six, or eight years.

26 As used in this subdivision, "public official" means a person
27 employed by a governmental agency who has the authority, as part
28 of that position, to incarcerate, arrest, or deport another. The
29 perpetrator does not actually have to be a public official.

30 (l) As used in subdivisions (c) and (d), "threatening to retaliate"
31 means a threat to kidnap or falsely imprison, or inflict extreme
32 pain, serious bodily injury, or death.

33 (m) In addition to any punishment imposed under this section,
34 the judge may assess a fine not to exceed seventy dollars (\$70)
35 against any person who violates this section, with the proceeds of
36 this fine to be used in accordance with Section 1463.23. The court,
37 however, shall take into consideration the defendant's ability to
38 pay, and no defendant shall be denied probation because of his or
39 her inability to pay the fine permitted under this subdivision.

1 ~~SEC. 6.~~

2 *SEC. 7.* Section 288 of the Penal Code is amended to read:

3 288. (a) Except as provided in subdivision (i), any person who
4 willfully and lewdly commits any lewd or lascivious act, including
5 any of the acts constituting other crimes provided for in Part 1,
6 upon or with the body, or any part or member thereof, of a child
7 who is under the age of 14 years, with the intent of arousing,
8 appealing to, or gratifying the lust, passions, or sexual desires of
9 that person or the child, is guilty of a felony and shall be punished
10 by imprisonment in the state prison for three, six, or eight years.

11 (b) (1) Any person who commits an act described in subdivision
12 (a) by use of force, violence, duress, menace, or fear of immediate
13 and unlawful bodily injury on the victim or another person, is
14 guilty of a felony and shall be punished by imprisonment in the
15 state prison for 5, 8, or 10 years.

16 (2) Any person who is a caretaker and commits an act described
17 in subdivision (a) upon a dependent person by use of force,
18 violence, duress, menace, or fear of immediate and unlawful bodily
19 injury on the victim or another person, with the intent described
20 in subdivision (a), is guilty of a felony and shall be punished by
21 imprisonment in the state prison for 5, 8, or 10 years.

22 (c) (1) Any person who commits an act described in subdivision
23 (a) with the intent described in that subdivision, and the victim is
24 a child of 14 or 15 years, and that person is at least 10 years older
25 than the child, is guilty of a public offense and shall be punished
26 by imprisonment in the state prison for one, two, or three years,
27 or by imprisonment in a county jail for not more than one year. In
28 determining whether the person is at least 10 years older than the
29 child, the difference in age shall be measured from the birth date
30 of the person to the birth date of the child.

31 (2) Any person who is a caretaker and commits an act described
32 in subdivision (a) upon a dependent person, with the intent
33 described in subdivision (a), is guilty of a public offense and shall
34 be punished by imprisonment in the state prison for one, two, or
35 three years, or by imprisonment in a county jail for not more than
36 one year.

37 (d) In any arrest or prosecution under this section or Section
38 288.5, the peace officer, district attorney, and the court shall
39 consider the needs of the child victim or dependent person and
40 shall do whatever is necessary, within existing budgetary resources,

1 and constitutionally permissible to prevent psychological harm to
2 the child victim or to prevent psychological harm to the dependent
3 person victim resulting from participation in the court process.

4 (e) Upon the conviction of any person for a violation of
5 subdivision (a) or (b), the court may, in addition to any other
6 penalty or fine imposed, order the defendant to pay an additional
7 fine not to exceed ten thousand dollars (\$10,000). In setting the
8 amount of the fine, the court shall consider any relevant factors,
9 including, but not limited to, the seriousness and gravity of the
10 offense, the circumstances of its commission, whether the
11 defendant derived any economic gain as a result of the crime, and
12 the extent to which the victim suffered economic losses as a result
13 of the crime. Every fine imposed and collected under this section
14 shall be deposited in the Victim-Witness Assistance Fund to be
15 available for appropriation to fund child sexual exploitation and
16 child sexual abuse victim counseling centers and prevention
17 programs pursuant to Section 13837.

18 If the court orders a fine imposed pursuant to this subdivision,
19 the actual administrative cost of collecting that fine, not to exceed
20 2 percent of the total amount paid, may be paid into the general
21 fund of the county treasury for the use and benefit of the county.

22 (f) For purposes of paragraph (2) of subdivision (b) and
23 paragraph (2) of subdivision (c), the following definitions apply:

24 (1) "Caretaker" means an owner, operator, administrator,
25 employee, independent contractor, agent, or volunteer of any of
26 the following public or private facilities when the facilities provide
27 care for elder or dependent persons:

28 (A) Twenty-four hour health facilities, as defined in Sections
29 1250, 1250.2, and 1250.3 of the Health and Safety Code.

30 (B) Clinics.

31 (C) Home health agencies.

32 (D) Adult day health care centers.

33 (E) Secondary schools that serve dependent persons and
34 postsecondary educational institutions that serve dependent persons
35 or elders.

36 (F) Sheltered workshops.

37 (G) Camps.

38 (H) Community care facilities, as defined by Section 1402 of
39 the Health and Safety Code, and residential care facilities for the

- 1 elderly, as defined in Section 1569.2 of the Health and Safety
2 Code.
- 3 (I) Respite care facilities.
- 4 (J) Foster homes.
- 5 (K) Regional centers for persons with developmental disabilities.
- 6 (L) A home health agency licensed in accordance with Chapter
7 8 (commencing with Section 1725) of Division 2 of the Health
8 and Safety Code.
- 9 (M) An agency that supplies in-home supportive services.
- 10 (N) Board and care facilities.
- 11 (O) Any other protective or public assistance agency that
12 provides health services or social services to elder or dependent
13 persons, including, but not limited to, in-home supportive services,
14 as defined in Section 14005.14 of the Welfare and Institutions
15 Code.
- 16 (P) Private residences.
- 17 (2) “Board and care facilities” means licensed or unlicensed
18 facilities that provide assistance with one or more of the following
19 activities:
- 20 (A) Bathing.
- 21 (B) Dressing.
- 22 (C) Grooming.
- 23 (D) Medication storage.
- 24 (E) Medical dispensation.
- 25 (F) Money management.
- 26 (3) “Dependent person” means any person who has a physical
27 or mental impairment that substantially restricts his or her ability
28 to carry out normal activities or to protect his or her rights,
29 including, but not limited to, persons who have physical or
30 developmental disabilities or whose physical or mental abilities
31 have significantly diminished because of age. “Dependent person”
32 includes any person who is admitted as an inpatient to a 24-hour
33 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of
34 the Health and Safety Code.
- 35 (g) Paragraph (2) of subdivision (b) and paragraph (2) of
36 subdivision (c) apply to the owners, operators, administrators,
37 employees, independent contractors, agents, or volunteers working
38 at these public or private facilities and only to the extent that the
39 individuals personally commit, conspire, aid, abet, or facilitate any

1 act prohibited by paragraph (2) of subdivision (b) and paragraph
2 (2) of subdivision (c).

3 (h) Paragraph (2) of subdivision (b) and paragraph (2) of
4 subdivision (c) do not apply to a caretaker who is a spouse of, or
5 who is in an equivalent domestic relationship with, the dependent
6 person under care.

7 (i) (1) Any person convicted of a violation of subdivision (a)
8 shall be imprisoned in the state prison for life with the possibility
9 of parole if the defendant personally inflicted bodily harm upon
10 the victim.

11 (2) The penalty provided in this subdivision shall only apply if
12 the fact that the defendant personally inflicted bodily harm upon
13 the victim is pled and proved.

14 (3) As used in this subdivision, “bodily harm” means any
15 substantial physical injury resulting from the use of force that is
16 more than the force necessary to commit the offense.

17 ~~SEC. 7.~~

18 *SEC. 8.* Section 288a of the Penal Code is amended to read:

19 288a. (a) Oral copulation is the act of copulating the mouth
20 of one person with the sexual organ or anus of another person.

21 (b) (1) Except as provided in Section 288, any person who
22 participates in an act of oral copulation with another person who
23 is under 18 years of age shall be punished by imprisonment in the
24 state prison, or in a county jail for a period of not more than one
25 year.

26 (2) Except as provided in Section 288, any person over the age
27 of 21 years who participates in an act of oral copulation with
28 another person who is under 16 years of age is guilty of a felony.

29 (c) (1) Any person who participates in an act of oral copulation
30 with another person who is under 14 years of age and more than
31 10 years younger than he or she shall be punished by imprisonment
32 in the state prison for three, six, or eight years.

33 (2) (A) Any person who commits an act of oral copulation when
34 the act is accomplished against the victim’s will by means of force,
35 violence, duress, menace, or fear of immediate and unlawful bodily
36 injury on the victim or another person shall be punished by
37 imprisonment in the state prison for three, six, or eight years.

38 (B) Any person who commits an act of oral copulation upon a
39 person who is under 14 years of age, when the act is accomplished
40 against the victim’s will by means of force, violence, duress,

1 menace, or fear of immediate and unlawful bodily injury on the
2 victim or another person, shall be punished by imprisonment in
3 the state prison for 8, 10, or 12 years.

4 (C) Any person who commits an act of oral copulation upon a
5 minor who is 14 years of age or older, when the act is accomplished
6 against the victim's will by means of force, violence, duress,
7 menace, or fear of immediate and unlawful bodily injury on the
8 victim or another person, shall be punished by imprisonment in
9 the state prison for 6, 8, or 10 years.

10 (D) This paragraph does not preclude prosecution under Section
11 269, Section 288.7, or any other provision of law.

12 (3) Any person who commits an act of oral copulation where
13 the act is accomplished against the victim's will by threatening to
14 retaliate in the future against the victim or any other person, and
15 there is a reasonable possibility that the perpetrator will execute
16 the threat, shall be punished by imprisonment in the state prison
17 for three, six, or eight years.

18 (d) (1) Any person who, while voluntarily acting in concert
19 with another person, either personally or by aiding and abetting
20 that other person, commits an act of oral copulation (1) when the
21 act is accomplished against the victim's will by means of force or
22 fear of immediate and unlawful bodily injury on the victim or
23 another person, or (2) where the act is accomplished against the
24 victim's will by threatening to retaliate in the future against the
25 victim or any other person, and there is a reasonable possibility
26 that the perpetrator will execute the threat, or (3) where the victim
27 is at the time incapable, because of a mental disorder or
28 developmental or physical disability, of giving legal consent, and
29 this is known or reasonably should be known to the person
30 committing the act, shall be punished by imprisonment in the state
31 prison for five, seven, or nine years. Notwithstanding the
32 appointment of a conservator with respect to the victim pursuant
33 to the provisions of the Lanterman-Petris-Short Act (Part 1
34 (commencing with Section 5000) of Division 5 of the Welfare and
35 Institutions Code), the prosecuting attorney shall prove, as an
36 element of the crime described under paragraph (3), that a mental
37 disorder or developmental or physical disability rendered the
38 alleged victim incapable of giving legal consent.

39 (2) Any person who, while voluntarily acting in concert with
40 another person, either personally or aiding and abetting that other

1 person, commits an act of oral copulation upon a victim who is
2 under 14 years of age, when the act is accomplished against the
3 victim's will by means of force or fear of immediate and unlawful
4 bodily injury on the victim or another person, shall be punished
5 by imprisonment in the state prison for 10, 12, or 14 years.

6 (3) Any person who, while voluntarily acting in concert with
7 another person, either personally or aiding and abetting that other
8 person, commits an act of oral copulation upon a victim who is a
9 minor 14 years of age or older, when the act is accomplished
10 against the victim's will by means of force or fear of immediate
11 and unlawful bodily injury on the victim or another person, shall
12 be punished by imprisonment in the state prison for 8, 10, or 12
13 years.

14 (4) This paragraph does not preclude prosecution under Section
15 269, Section 288.7, or any other provision of law.

16 (e) Any person who participates in an act of oral copulation
17 while confined in any state prison, as defined in Section 4504 or
18 in any local detention facility as defined in Section 6031.4, shall
19 be punished by imprisonment in the state prison, or in a county
20 jail for a period of not more than one year.

21 (f) Any person who commits an act of oral copulation, and the
22 victim is at the time unconscious of the nature of the act and this
23 is known to the person committing the act, shall be punished by
24 imprisonment in the state prison for a period of three, six, or eight
25 years. As used in this subdivision, "unconscious of the nature of
26 the act" means incapable of resisting because the victim meets one
27 of the following conditions:

28 (1) Was unconscious or asleep.

29 (2) Was not aware, knowing, perceiving, or cognizant that the
30 act occurred.

31 (3) Was not aware, knowing, perceiving, or cognizant of the
32 essential characteristics of the act due to the perpetrator's fraud in
33 fact.

34 (4) Was not aware, knowing, perceiving, or cognizant of the
35 essential characteristics of the act due to the perpetrator's fraudulent
36 representation that the oral copulation served a professional purpose
37 when it served no professional purpose.

38 (g) Except as provided in subdivision (h), any person who
39 commits an act of oral copulation, and the victim is at the time
40 incapable, because of a mental disorder or developmental or

1 physical disability, of giving legal consent, and this is known or
2 reasonably should be known to the person committing the act,
3 shall be punished by imprisonment in the state prison, for three,
4 six, or eight years. Notwithstanding the existence of a
5 conservatorship pursuant to the provisions of the
6 Lanterman-Petris-Short Act (Part 1 (commencing with Section
7 5000) of Division 5 of the Welfare and Institutions Code), the
8 prosecuting attorney shall prove, as an element of the crime, that
9 a mental disorder or developmental or physical disability rendered
10 the alleged victim incapable of giving consent.

11 (h) Any person who commits an act of oral copulation, and the
12 victim is at the time incapable, because of a mental disorder or
13 developmental or physical disability, of giving legal consent, and
14 this is known or reasonably should be known to the person
15 committing the act, and both the defendant and the victim are at
16 the time confined in a state hospital for the care and treatment of
17 the mentally disordered or in any other public or private facility
18 for the care and treatment of the mentally disordered approved by
19 a county mental health director, shall be punished by imprisonment
20 in the state prison, or in a county jail for a period of not more than
21 one year. Notwithstanding the existence of a conservatorship
22 pursuant to the provisions of the Lanterman-Petris-Short Act (Part
23 1 (commencing with Section 5000) of Division 5 of the Welfare
24 and Institutions Code), the prosecuting attorney shall prove, as an
25 element of the crime, that a mental disorder or developmental or
26 physical disability rendered the alleged victim incapable of giving
27 legal consent.

28 (i) Any person who commits an act of oral copulation, where
29 the victim is prevented from resisting by any intoxicating or
30 anesthetic substance, or any controlled substance, and this condition
31 was known, or reasonably should have been known by the accused,
32 shall be punished by imprisonment in the state prison for a period
33 of three, six, or eight years.

34 (j) Any person who commits an act of oral copulation, where
35 the victim submits under the belief that the person committing the
36 act is the victim's spouse, and this belief is induced by any artifice,
37 pretense, or concealment practiced by the accused, with intent to
38 induce the belief, shall be punished by imprisonment in the state
39 prison for a period of three, six, or eight years.

1 (k) Any person who commits an act of oral copulation, where
2 the act is accomplished against the victim's will by threatening to
3 use the authority of a public official to incarcerate, arrest, or deport
4 the victim or another, and the victim has a reasonable belief that
5 the perpetrator is a public official, shall be punished by
6 imprisonment in the state prison for a period of three, six, or eight
7 years.

8 As used in this subdivision, "public official" means a person
9 employed by a governmental agency who has the authority, as part
10 of that position, to incarcerate, arrest, or deport another. The
11 perpetrator does not actually have to be a public official.

12 (l) As used in subdivisions (c) and (d), "threatening to retaliate"
13 means a threat to kidnap or falsely imprison, or to inflict extreme
14 pain, serious bodily injury, or death.

15 (m) In addition to any punishment imposed under this section,
16 the judge may assess a fine not to exceed seventy dollars (\$70)
17 against any person who violates this section, with the proceeds of
18 this fine to be used in accordance with Section 1463.23. The court
19 shall, however, take into consideration the defendant's ability to
20 pay, and no defendant shall be denied probation because of his or
21 her inability to pay the fine permitted under this subdivision.

22 ~~SEC. 8.~~

23 *SEC. 9.* Section 289 of the Penal Code is amended to read:

24 289. (a) (1) (A) Any person who commits an act of sexual
25 penetration when the act is accomplished against the victim's will
26 by means of force, violence, duress, menace, or fear of immediate
27 and unlawful bodily injury on the victim or another person shall
28 be punished by imprisonment in the state prison for three, six, or
29 eight years.

30 (B) Any person who commits an act of sexual penetration upon
31 a child who is under 14 years of age, when the act is accomplished
32 against the victim's will by means of force, violence, duress,
33 menace, or fear of immediate and unlawful bodily injury on the
34 victim or another person, shall be punished by imprisonment in
35 the state prison for 8, 10, or 12 years.

36 (C) Any person who commits an act of sexual penetration upon
37 a minor who is 14 years of age or older, when the act is
38 accomplished against the victim's will by means of force, violence,
39 duress, menace, or fear of immediate and unlawful bodily injury

1 on the victim or another person, shall be punished by imprisonment
2 in the state prison for 6, 8, or 10 years.

3 (D) This paragraph does not preclude prosecution under Section
4 269, Section 288.7, or any other provision of law.

5 (2) Any person who commits an act of sexual penetration when
6 the act is accomplished against the victim's will by threatening to
7 retaliate in the future against the victim or any other person, and
8 there is a reasonable possibility that the perpetrator will execute
9 the threat, shall be punished by imprisonment in the state prison
10 for three, six, or eight years.

11 (b) Except as provided in subdivision (c), any person who
12 commits an act of sexual penetration, and the victim is at the time
13 incapable, because of a mental disorder or developmental or
14 physical disability, of giving legal consent, and this is known or
15 reasonably should be known to the person committing the act or
16 causing the act to be committed, shall be punished by imprisonment
17 in the state prison for three, six, or eight years. Notwithstanding
18 the appointment of a conservator with respect to the victim pursuant
19 to the provisions of the Lanterman-Petris-Short Act (Part 1
20 (commencing with Section 5000) of Division 5 of the Welfare and
21 Institutions Code), the prosecuting attorney shall prove, as an
22 element of the crime, that a mental disorder or developmental or
23 physical disability rendered the alleged victim incapable of giving
24 legal consent.

25 (c) Any person who commits an act of sexual penetration, and
26 the victim is at the time incapable, because of a mental disorder
27 or developmental or physical disability, of giving legal consent,
28 and this is known or reasonably should be known to the person
29 committing the act or causing the act to be committed and both
30 the defendant and the victim are at the time confined in a state
31 hospital for the care and treatment of the mentally disordered or
32 in any other public or private facility for the care and treatment of
33 the mentally disordered approved by a county mental health
34 director, shall be punished by imprisonment in the state prison, or
35 in a county jail for a period of not more than one year.
36 Notwithstanding the existence of a conservatorship pursuant to
37 the provisions of the Lanterman-Petris-Short Act (Part 1
38 (commencing with Section 5000) of Division 5 of the Welfare and
39 Institutions Code), the prosecuting attorney shall prove, as an
40 element of the crime, that a mental disorder or developmental or

1 physical disability rendered the alleged victim incapable of giving
2 legal consent.

3 (d) Any person who commits an act of sexual penetration, and
4 the victim is at the time unconscious of the nature of the act and
5 this is known to the person committing the act or causing the act
6 to be committed, shall be punished by imprisonment in the state
7 prison for three, six, or eight years. As used in this subdivision,
8 “unconscious of the nature of the act” means incapable of resisting
9 because the victim meets one of the following conditions:

10 (1) Was unconscious or asleep.

11 (2) Was not aware, knowing, perceiving, or cognizant that the
12 act occurred.

13 (3) Was not aware, knowing, perceiving, or cognizant of the
14 essential characteristics of the act due to the perpetrator’s fraud in
15 fact.

16 (4) Was not aware, knowing, perceiving, or cognizant of the
17 essential characteristics of the act due to the perpetrator’s fraudulent
18 representation that the sexual penetration served a professional
19 purpose when it served no professional purpose.

20 (e) Any person who commits an act of sexual penetration when
21 the victim is prevented from resisting by any intoxicating or
22 anesthetic substance, or any controlled substance, and this condition
23 was known, or reasonably should have been known by the accused,
24 shall be punished by imprisonment in the state prison for a period
25 of three, six, or eight years.

26 (f) Any person who commits an act of sexual penetration when
27 the victim submits under the belief that the person committing the
28 act or causing the act to be committed is the victim’s spouse, and
29 this belief is induced by any artifice, pretense, or concealment
30 practiced by the accused, with intent to induce the belief, shall be
31 punished by imprisonment in the state prison for a period of three,
32 six, or eight years.

33 (g) Any person who commits an act of sexual penetration when
34 the act is accomplished against the victim’s will by threatening to
35 use the authority of a public official to incarcerate, arrest, or deport
36 the victim or another, and the victim has a reasonable belief that
37 the perpetrator is a public official, shall be punished by
38 imprisonment in the state prison for a period of three, six, or eight
39 years.

1 As used in this subdivision, “public official” means a person
2 employed by a governmental agency who has the authority, as part
3 of that position, to incarcerate, arrest, or deport another. The
4 perpetrator does not actually have to be a public official.

5 (h) Except as provided in Section 288, any person who
6 participates in an act of sexual penetration with another person
7 who is under 18 years of age shall be punished by imprisonment
8 in the state prison or in the county jail for a period of not more
9 than one year.

10 (i) Except as provided in Section 288, any person over the age
11 of 21 years who participates in an act of sexual penetration with
12 another person who is under 16 years of age shall be guilty of a
13 felony.

14 (j) Any person who participates in an act of sexual penetration
15 with another person who is under 14 years of age and who is more
16 than 10 years younger than he or she shall be punished by
17 imprisonment in the state prison for three, six, or eight years.

18 (k) As used in this section:

19 (1) “Sexual penetration” is the act of causing the penetration,
20 however slight, of the genital or anal opening of any person or
21 causing another person to so penetrate the defendant’s or another
22 person’s genital or anal opening for the purpose of sexual arousal,
23 gratification, or abuse by any foreign object, substance, instrument,
24 or device, or by any unknown object.

25 (2) “Foreign object, substance, instrument, or device” shall
26 include any part of the body, except a sexual organ.

27 (3) “Unknown object” shall include any foreign object,
28 substance, instrument, or device, or any part of the body, including
29 a penis, when it is not known whether penetration was by a penis
30 or by a foreign object, substance, instrument, or device, or by any
31 other part of the body.

32 (l) As used in subdivision (a), “threatening to retaliate” means
33 a threat to kidnap or falsely imprison, or inflict extreme pain,
34 serious bodily injury or death.

35 (m) As used in this section, “victim” includes any person who
36 the defendant causes to penetrate the genital or anal opening of
37 the defendant or another person or whose genital or anal opening
38 is caused to be penetrated by the defendant or another person and
39 who otherwise qualifies as a victim under the requirements of this
40 section.

1 ~~SEC. 9.~~

2 *SEC. 10.* Section 290.04 of the Penal Code is amended to read:

3 290.04. (a) (1) The sex offender risk assessment tools
4 authorized by this section for use with selected populations shall
5 be known, with respect to each population, as the State-Authorized
6 Risk Assessment Tool for Sex Offenders (SARATSO). If a
7 SARATSO has not been selected for a given population pursuant
8 to this section, no duty to administer the SARATSO elsewhere in
9 this code shall apply with respect to that population. Every person
10 required to register as a sex offender shall be subject to assessment
11 with the SARATSO as set forth in this section and elsewhere in
12 this code.

13 (2) A representative of the Department of Corrections and
14 Rehabilitation, in consultation with a representative of the State
15 Department of Mental Health and a representative of the Attorney
16 General's office, shall comprise the SARATSO Review
17 Committee. The purpose of the committee, which shall be staffed
18 by the Department of Corrections and Rehabilitation, shall be to
19 ensure that the SARATSO reflects the most reliable, objective and
20 well-established protocols for predicting sex offender risk of
21 recidivism, has been scientifically validated and cross validated,
22 and is, or is reasonably likely to be, widely accepted by the courts.
23 The committee shall consult with experts in the fields of risk
24 assessment and the use of actuarial instruments in predicting sex
25 offender risk, sex offending, sex offender treatment, mental health,
26 and law, as it deems appropriate.

27 (b) (1) Commencing January 1, 2007, the SARATSO for adult
28 males required to register as sex offenders shall be the STATIC-99
29 risk assessment scale, which shall be the SARATSO static tool for
30 adult males.

31 (2) On or before January 1, 2008, the SARATSO Review
32 Committee shall determine whether the STATIC-99 should be
33 supplemented with an actuarial instrument that measures dynamic
34 risk factors or whether the STATIC-99 should be replaced as the
35 SARATSO with a different risk assessment tool. On or before
36 January 1, 2012, the SARATSO Review Committee shall select
37 an actuarial instrument that measures dynamic risk factors; and an
38 actuarial instrument that measures risk of future sexual violence.
39 The selected instruments shall be the SARATSO dynamic tool for
40 adult males and the SARATSO future violence tool for adult males.

1 If the committee unanimously agrees on changes to be made to a
2 designated SARATSO, it shall advise the Governor and the
3 Legislature of the changes, and the Department of Corrections and
4 Rehabilitation shall post the decision on its Internet Web site. Sixty
5 days after the decision is posted, the selected tool shall become
6 the SARATSO for adult males.

7 (c) On or before July 1, 2007, the SARATSO Review Committee
8 shall research risk assessment tools for adult females required to
9 register as sex offenders. If the committee unanimously agrees on
10 an appropriate risk assessment tool to be used to assess this
11 population, it shall advise the Governor and the Legislature of the
12 selected tool, and the State Department of Mental Health shall post
13 the decision on its Internet Web site. Sixty days after the decision
14 is posted, the selected tool shall become the SARATSO for adult
15 females.

16 (d) On or before July 1, 2007, the SARATSO Review
17 Committee shall research risk assessment tools for male juveniles
18 required to register as sex offenders. If the committee unanimously
19 agrees on an appropriate risk assessment tool to be used to assess
20 this population, it shall advise the Governor and the Legislature
21 of the selected tool, and the State Department of Mental Health
22 shall post the decision on its Internet Web site. Sixty days after
23 the decision is posted, the selected tool shall become the
24 SARATSO for male juveniles.

25 (e) On or before July 1, 2007, the SARATSO Review Committee
26 shall research risk assessment tools for female juveniles required
27 to register as sex offenders. If the committee unanimously agrees
28 on an appropriate risk assessment tool to be used to assess this
29 population, it shall advise the Governor and the Legislature of the
30 selected tool, and the State Department of Mental Health shall post
31 the decision on its Internet Web site. Sixty days after the decision
32 is posted, the selected tool shall become the SARATSO for female
33 juveniles.

34 (f) The committee shall periodically evaluate the SARATSO
35 static, dynamic, and risk of future violence tools for each specified
36 population. If the committee unanimously agrees on a change to
37 the SARATSO for any population, it shall advise the Governor
38 and the Legislature of the selected tool, and the Department of
39 Corrections and Rehabilitation shall post the decision on its Internet

1 Web site. Sixty days after the decision is posted, the selected tool
2 shall become the SARATSO for that population.

3 (g) The committee shall perform other functions consistent with
4 the provisions of this act or as may be otherwise required by law,
5 including, but not limited to, defining tiers of risk based on the
6 SARATSO. The committee shall be immune from liability for
7 good faith conduct under this act.

8 ~~SEC. 10.~~

9 *SEC. 11.* Section 290.05 of the Penal Code is amended to read:

10 290.05. (a) The SARATSO Training Committee shall be
11 comprised of a representative of the State Department of Mental
12 Health, a representative of the Department of Corrections and
13 Rehabilitation, a representative of the Attorney General's Office,
14 and a representative of the Chief Probation Officers of California.

15 (b) On or before January 1, 2008, the SARATSO Training
16 Committee, in consultation with the Corrections Standards
17 Authority and the Commission on Peace Officer Standards and
18 Training, shall develop a training program for persons authorized
19 by this code to administer the static SARATSO, as set forth in
20 Section 290.04.

21 (c) (1) The Department of Corrections and Rehabilitation shall
22 be responsible for overseeing the training of persons who will
23 administer the static SARATSO pursuant to paragraph (1) or (2)
24 of subdivision (a) of Section 290.06.

25 (2) The State Department of Mental Health shall be responsible
26 for overseeing the training of persons who will administer the static
27 SARATSO pursuant to paragraph (3) of subdivision (a) of Section
28 290.06.

29 (3) The Correction Standards Authority shall be responsible for
30 developing standards for the training of persons who will
31 administer the static SARATSO pursuant to paragraph (5) or (6)
32 of subdivision (a) of Section 290.06.

33 (4) The Commission on Peace Officer Standards and Training
34 shall be responsible for developing standards for the training of
35 persons who will administer the static SARATSO pursuant to
36 subdivision (b) of Section 290.06.

37 (d) The training shall be conducted by experts in the field of
38 risk assessment and the use of actuarial instruments in predicting
39 sex offender risk. Subject to requirements established by the
40 committee, the Department of Corrections and Rehabilitation, the

1 State Department of Mental Health, probation departments, and
2 authorized local law enforcement agencies shall designate key
3 persons within their organizations to attend training and, as
4 authorized by the department, to train others within their
5 organizations designated to perform risk assessments as required
6 or authorized by law. Any person who administers the static
7 SARATSO shall receive training no less frequently than every two
8 years.

9 (e) If the agency responsible for scoring the static SARATSO
10 believes an individual score does not represent the person's true
11 risk level, based on factors in the offender's record, the agency
12 may submit the case to the experts retained by the SARATSO
13 Review Committee to monitor the scoring of the SARATSO. Those
14 experts shall be guided by empirical research in determining
15 whether to raise or lower the risk level. Agencies that score the
16 static SARATSO shall develop a protocol for submission of risk
17 level override requests to the experts retained in accordance with
18 this subdivision.

19 (f) The static SARATSO may be performed for purposes
20 authorized by statute only by persons trained pursuant to this
21 section. Persons who administer the dynamic SARATSO and the
22 future violence SARATSO while under contract to provide sex
23 offender management programs, pursuant to Section 290.09, shall
24 be trained to administer the dynamic and future violence
25 SARATSO tools as required in Section 290.09. Probation officers
26 or parole agents may be trained by SARATSO experts on the
27 dynamic SARATSO tool and perform assessments on that tool
28 only if authorized by the SARATSO Training Committee to do so
29 after successful completion of training.

30 ~~SEC. 11.~~

31 *SEC. 12.* Section 290.06 of the Penal Code is amended to read:
32 290.06. Effective on or before July 1, 2008, the static
33 SARATSO, as set forth in Section 290.04, shall be administered
34 as follows:

35 (a) (1) The Department of Corrections and Rehabilitation shall
36 assess every eligible person who is incarcerated in state prison.
37 Whenever possible, the assessment shall take place at least four
38 months, but no sooner than 10 months, prior to release from
39 incarceration.

1 (2) The department shall assess every eligible person who is on
2 parole if the person was not assessed prior to release from state
3 prison. Whenever possible, the assessment shall take place at least
4 four months, but no sooner than 10 months, prior to termination
5 of parole. The department shall record in a database the risk
6 assessment scores of persons assessed pursuant to this paragraph
7 and paragraph (1), and any risk assessment score that was
8 submitted to the department by a probation officer pursuant to
9 Section 1203.

10 (3) The State Department of Mental Health shall assess every
11 eligible person who is committed to that department. Whenever
12 possible, the assessment shall take place at least four months, but
13 no sooner than 10 months, prior to release from commitment. The
14 State Department of Mental Health shall record in a database the
15 risk assessment scores of persons assessed pursuant to this
16 paragraph and any risk assessment score that was submitted to the
17 department by a probation officer pursuant to Section 1203.

18 (4) Commencing January 1, 2010, the Department of Corrections
19 and Rehabilitation and the State Department of Mental Health
20 shall send the scores obtained in accordance with paragraphs (2)
21 and (3) respectively, to the Department of Justice Sex Offender
22 Tracking Program not later than 30 days after the date of the
23 assessment. The risk assessment score of an offender shall be made
24 part of his or her file maintained by the Department of Justice Sex
25 Offender Tracking Program as soon as possible without financial
26 impact, but no later than January 1, 2012.

27 (5) Each probation department shall assess every eligible person
28 for whom it prepares a report pursuant to Section 1203.

29 (6) Each probation department shall assess every eligible person
30 under its supervision who was not assessed pursuant to paragraph
31 (5). The assessment shall take place prior to the termination of
32 probation, but no later than January 1, 2010.

33 (b) Eligible persons not assessed pursuant to subdivision (a)
34 may be assessed as follows:

35 (1) Upon request of the law enforcement agency in the
36 jurisdiction in which the person is registered pursuant to Sections
37 290 to 290.023, inclusive, the person shall be assessed. The law
38 enforcement agency may enter into a memorandum of
39 understanding with a probation department to perform the
40 assessment. In the alternative, the law enforcement agency may

1 arrange to have personnel trained to perform the risk assessment
2 in accordance with subdivision (d) of Section 290.05.

3 (2) Eligible persons not assessed pursuant to subdivision (a)
4 may request that a risk assessment be performed. A request form
5 shall be available at registering law enforcement agencies. The
6 person requesting the assessment shall pay a fee for the assessment
7 that shall be sufficient to cover the cost of the assessment. The risk
8 assessment so requested shall be performed either by the probation
9 department, if a memorandum of understanding is established
10 between the law enforcement agency and the probation department,
11 or by personnel who have been trained to perform risk assessment
12 in accordance with subdivision (d) of Section 290.05.

13 (c) For purposes of this section, “eligible person” means a person
14 who was convicted of an offense that requires him or her to register
15 as a sex offender pursuant to Section 290 and who is eligible for
16 assessment, pursuant to the official Coding Rules designated for
17 use with the risk assessment instrument by the author of any risk
18 assessment instrument (SARATSO) selected by the SARATSO
19 Review Committee.

20 (d) Persons authorized to perform risk assessments pursuant to
21 this section, Section 1203, and Section 706 of the Welfare and
22 Institutions Code shall be immune from liability for good faith
23 conduct under this act.

24 ~~SEC. 12.~~

25 *SEC. 13.* Section 290.09 is added to the Penal Code, to read:

26 290.09. On or before July 2012, the SARATSO dynamic tool
27 and the SARATSO future violence tool, as set forth in Section
28 290.04, shall be administered as follows:

29 (a) (1) Every sex offender required to register pursuant to
30 Sections 290 to 290.023, inclusive, shall, while on parole or formal
31 supervised probation, participate in an approved sex offender
32 management program, pursuant to Sections 1203.067 and 3008.

33 (2) The sex offender management program shall meet the
34 certification requirements developed by the California Sex Offender
35 Management Board pursuant to Section 9003. Probation
36 departments and the Department of Corrections and Rehabilitation
37 shall enter into contracts with certified sex offender management
38 professionals to provide those programs. Probation departments
39 and the Department of Corrections and Rehabilitation shall not
40 employ or contract with, and shall not allow a sex offender to

1 employ or contract with, any individual or entity to provide sex
2 offender evaluation or treatment services pursuant to this section
3 unless the sex offender evaluation or treatment services to be
4 provided by the individual or entity conforms with the standards
5 developed pursuant to Section 9003.

6 (b) (1) The sex offender management professionals certified
7 by the California Sex Offender Management Board in accordance
8 with Section 9003 who enter into the contracts for sex offender
9 management programs with any probation department and the
10 Department of Corrections and Rehabilitation, pursuant to Section
11 290.09, shall assess each registered sex offender on formal
12 supervised probation or parole using the SARATSO dynamic tool,
13 when a dynamic risk factor changes, and shall do a final dynamic
14 assessment within six months of the offender's release from
15 supervision. The management professional shall also assess the
16 sex offenders in the program with the SARATSO future violence
17 tool.

18 (2) The certified sex offender management professional shall,
19 as soon as possible but not later than 30 days *after* the assessment,
20 provide the person's score on the SARATSO dynamic tool and
21 the future violence tool to the person's parole agent or probation
22 officer. Within five working days of receipt of the score, the parole
23 or probation officer shall send the score to the Department of
24 Justice, and the score shall be accessible to law enforcement
25 through the Department of Justice's Internet Web site for the
26 California Sex and Arson Registry (CSAR).

27 (c) The certified sex offender management professional shall
28 communicate with the offender's probation officer or parole agent
29 on a regular basis, *but* at least once a month, about the offender's
30 progress in the program and dynamic risk assessment issues, and
31 shall share pertinent information with the certified polygraph
32 examiner as required.

33 (d) The SARATSO Training Committee shall provide annual
34 training on the SARATSO dynamic tool and the SARATSO future
35 violence tool, ~~and certified tool.~~ *Certified* sex offender management
36 professionals *shall* attend this training once to obtain authorization
37 to perform the assessments, and thereafter attend training updates
38 as required by the SARATSO Training Committee. If a sex
39 offender management professional is certified pursuant to Section
40 9003 to conduct an approved sex offender management program

1 prior to attending SARATSO training on the dynamic and violent
2 risk assessment tools, he or she *shall* present to the SARATSO
3 Training Committee proof of training on these tools from a risk
4 assessment expert approved by the SARATSO Training
5 Committee.

6 ~~SEC. 13.~~

7 *SEC. 14.* Section 290.46 of the Penal Code is amended to read:

8 290.46. (a) (1) On or before the dates specified in this section,
9 the Department of Justice shall make available information
10 concerning persons who are required to register pursuant to Section
11 290 to the public via an Internet Web site as specified in this
12 section. The department shall update the Internet Web site on an
13 ongoing basis. All information identifying the victim by name,
14 birth date, address, or relationship to the registrant shall be
15 excluded from the Internet Web site. The name or address of the
16 person's employer and the listed person's criminal history other
17 than the specific crimes for which the person is required to register
18 shall not be included on the Internet Web site. The Internet Web
19 site shall be translated into languages other than English as
20 determined by the department.

21 (2) (A) On or before July 1, 2010, the Department of Justice
22 shall make available to the public, via an Internet Web site as
23 specified in this section, as to any person described in subdivision
24 (b), (c), or (d), the following information:

25 (i) The year of conviction of his or her most recent offense
26 requiring registration pursuant to Section 290.

27 (ii) The year he or she was released from incarceration for that
28 offense.

29 (iii) Whether he or she was subsequently incarcerated for any
30 other felony, if that fact is reported to the department. If the
31 department has no information about a subsequent incarceration
32 for any felony, that fact shall be noted on the Internet Web site.

33 However, no year of conviction shall be made available to the
34 public unless the department also is able to make available the
35 corresponding year of release of incarceration for that offense, and
36 the required notation regarding any subsequent felony.

37 (B) (i) Any state facility that releases from incarceration a
38 person who was incarcerated because of a crime for which he or
39 she is required to register as a sex offender pursuant to Section
40 290 shall, within 30 days of release, provide the year of release

1 for his or her most recent offense requiring registration to the
2 Department of Justice in a manner and format approved by the
3 department.

4 (ii) Any state facility that releases a person who is required to
5 register pursuant to Section 290 from incarceration whose
6 incarceration was for a felony committed subsequently to the
7 offense for which he or she is required to register shall, within 30
8 days of release, advise the Department of Justice of that fact.

9 (iii) Any state facility that, prior to January 1, 2007, released
10 from incarceration a person who was incarcerated because of a
11 crime for which he or she is required to register as a sex offender
12 pursuant to Section 290 shall provide the year of release for his or
13 her most recent offense requiring registration to the Department
14 of Justice in a manner and format approved by the department.
15 The information provided by the Department of Corrections and
16 Rehabilitation shall be limited to information that is currently
17 maintained in an electronic format.

18 (iv) Any state facility that, prior to January 1, 2007, released a
19 person who is required to register pursuant to Section 290 from
20 incarceration whose incarceration was for a felony committed
21 subsequently to the offense for which he or she is required to
22 register shall advise the Department of Justice of that fact in a
23 manner and format approved by the department. The information
24 provided by the Department of Corrections and Rehabilitation
25 shall be limited to information that is currently maintained in an
26 electronic format.

27 (3) The State Department of Mental Health shall provide to the
28 Department of Justice Sex Offender Tracking Program the names
29 of all persons committed to its custody pursuant to Article 4
30 (commencing with Section 6600) of Chapter 2 of Part 2 of Division
31 6 of the Welfare and Institutions Code, within 30 days of
32 commitment, and shall provide the names of all of those persons
33 released from its custody within five working days of release.

34 (b) (1) On or before July 1, 2005, with respect to a person who
35 has been convicted of the commission or the attempted commission
36 of any of the offenses listed in, or who is described in, paragraph
37 (2), the Department of Justice shall make available to the public
38 via the Internet Web site his or her name and known aliases, a
39 photograph, a physical description, including gender and race, date
40 of birth, criminal history, prior adjudication as a sexually violent

1 predator, the address at which the person resides, and any other
2 information that the Department of Justice deems relevant, but not
3 the information excluded pursuant to subdivision (a). On or before
4 January 1, 2013, the department shall make available to the public
5 via the Internet Web site his or her static SARATSO score and
6 information on an elevated risk level based on the SARATSO
7 future violence tool.

8 (2) This subdivision shall apply to the following offenses and
9 offenders:

10 (A) Section 187 committed in the perpetration, or an attempt to
11 perpetrate, rape or any act punishable under Section 286, 288,
12 288a, or 289.

13 (B) Section 207 committed with intent to violate Section 261,
14 286, 288, 288a, or 289.

15 (C) Section 209 committed with intent to violate Section 261,
16 286, 288, 288a, or 289.

17 (D) Paragraph (2) or (6) of subdivision (a) of Section 261.

18 (E) Section 264.1.

19 (F) Section 269.

20 (G) Subdivision (c) or (d) of Section 286.

21 (H) Subdivision (a), (b), or (c) of Section 288, provided that the
22 offense is a felony.

23 (I) Subdivision (c) or (d) of Section 288a.

24 (J) Section 288.3, provided that the offense is a felony.

25 (K) Section 288.4, provided that the offense is a felony.

26 (L) Section 288.5.

27 (M) Subdivision (a) or (j) of Section 289.

28 (N) Section 288.7.

29 (O) Any person who has ever been adjudicated a sexually violent
30 predator, as defined in Section 6600 of the Welfare and Institutions
31 Code.

32 (P) A felony violation of Section 311.1.

33 (Q) A felony violation of subdivision (b), (c), or (d) of Section
34 311.2.

35 (R) A felony violation of Section 311.3.

36 (S) A felony violation of subdivision (a), (b), or (c) of Section
37 311.4.

38 (T) Section 311.10.

39 (U) A felony violation of Section 311.11.

(c) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). On or before July 1, 2006, the Department of Justice shall determine whether any person convicted of an offense listed in paragraph (2) also has one or more prior or subsequent convictions of an offense listed in subdivision (c) of Section 290, and, for those persons, the Department of Justice shall make available to the public via the Internet Web site the address at which the person resides. However, the address at which the person resides shall not be disclosed until a determination is made that the person is, by virtue of his or her additional prior or subsequent conviction of an offense listed in subdivision (c) of Section 290, subject to this subdivision.

(2) This subdivision shall apply to the following offenses:

(A) Section 220, except assault to commit mayhem.

(B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

(C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286.

(D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a.

(E) Subdivision (b), (d), (e), or (i) of Section 289.

(d) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information

1 excluded pursuant to subdivision (a) or the address at which the
2 person resides.

3 (2) This subdivision shall apply to the following offenses and
4 offenders:

5 (A) Subdivision (a) of Section 243.4, provided that the offense
6 is a felony.

7 (B) Section 266, provided that the offense is a felony.

8 (C) Section 266c, provided that the offense is a felony.

9 (D) Section 266j.

10 (E) Section 267.

11 (F) Subdivision (c) of Section 288, provided that the offense is
12 a misdemeanor.

13 (G) Section 288.3, provided that the offense is a misdemeanor.

14 (H) Section 288.4, provided that the offense is a misdemeanor.

15 (I) Section 626.81.

16 (J) Section 647.6.

17 (K) Section 653c.

18 (L) Any person required to register pursuant to Section 290
19 based upon an out-of-state conviction, unless that person is
20 excluded from the Internet Web site pursuant to subdivision (e).
21 However, if the Department of Justice has determined that the
22 out-of-state crime, if committed or attempted in this state, would
23 have been punishable in this state as a crime described in
24 subdivision (c) of Section 290, the person shall be placed on the
25 Internet Web site as provided in subdivision (b) or (c), as applicable
26 to the crime.

27 (e) (1) If a person has been convicted of the commission or the
28 attempted commission of any of the offenses listed in this
29 subdivision, and he or she has been convicted of no other offense
30 listed in subdivision (b), (c), or (d) other than those listed in this
31 subdivision, that person may file an application with the
32 Department of Justice, on a form approved by the department, for
33 exclusion from the Internet Web site. If the department determines
34 that the person meets the requirements of this subdivision, the
35 department shall grant the exclusion and no information concerning
36 the person shall be made available via the Internet Web site
37 described in this section. He or she bears the burden of proving
38 the facts that make him or her eligible for exclusion from the
39 Internet Web site. However, a person who has filed for or been
40 granted an exclusion from the Internet Web site is not relieved of

1 his or her duty to register as a sex offender pursuant to Section
2 290 nor from any otherwise applicable provision of law.

3 (2) This subdivision shall apply to the following offenses:

4 (A) A felony violation of subdivision (a) of Section 243.4.

5 (B) Section 647.6, if the offense is a misdemeanor.

6 (C) A felony violation of Section 311.1, subdivision (b), (c), or
7 (d) of Section 311.2, or Section 311.3, 311.4, 311.10, or 311.11 if
8 the person submits to the department a certified copy of a probation
9 report filed in court that clearly states that all victims involved in
10 the commission of the offense were at least 16 years of age or older
11 at the time of the commission of the offense.

12 (D) (i) An offense for which the offender successfully
13 completed probation, provided that the offender submits to the
14 department a certified copy of a probation report, presentencing
15 report, report prepared pursuant to Section 288.1, or other official
16 court document that clearly demonstrates that the offender was
17 the victim's parent, stepparent, sibling, or grandparent and that the
18 crime did not involve either oral copulation or penetration of the
19 vagina or rectum of either the victim or the offender by the penis
20 of the other or by any foreign object.

21 (ii) An offense for which the offender is on probation at the
22 time of his or her application, provided that the offender submits
23 to the department a certified copy of a probation report,
24 presentencing report, report prepared pursuant to Section 288.1,
25 or other official court document that clearly demonstrates that the
26 offender was the victim's parent, stepparent, sibling, or grandparent
27 and that the crime did not involve either oral copulation or
28 penetration of the vagina or rectum of either the victim or the
29 offender by the penis of the other or by any foreign object.

30 (iii) If, subsequent to his or her application, the offender commits
31 a violation of probation resulting in his or her incarceration in
32 county jail or state prison, his or her exclusion, or application for
33 exclusion, from the Internet Web site shall be terminated.

34 (iv) For the purposes of this subparagraph, "successfully
35 completed probation" means that during the period of probation
36 the offender neither received additional county jail or state prison
37 time for a violation of probation nor was convicted of another
38 offense resulting in a sentence to county jail or state prison.

39 (3) If the department determines that a person who was granted
40 an exclusion under a former version of this subdivision would not

1 qualify for an exclusion under the current version of this
2 subdivision, the department shall rescind the exclusion, make a
3 reasonable effort to provide notification to the person that the
4 exclusion has been rescinded, and, no sooner than 30 days after
5 notification is attempted, make information about the offender
6 available to the public on the Internet Web site as provided in this
7 section.

8 (4) Effective January 1, 2012, no person shall be excluded
9 pursuant to this subdivision unless the offender has submitted to
10 the department documentation sufficient for the department to
11 determine that he or she has a SARATSO risk level of low or
12 moderate-low.

13 (f) The Department of Justice shall make a reasonable effort to
14 provide notification to persons who have been convicted of the
15 commission or attempted commission of an offense specified in
16 subdivision (b), (c), or (d), that on or before July 1, 2005, the
17 department is required to make information about specified sex
18 offenders available to the public via an Internet Web site as
19 specified in this section. The Department of Justice shall also make
20 a reasonable effort to provide notice that some offenders are
21 eligible to apply for exclusion from the Internet Web site.

22 (g) (1) A designated law enforcement entity, as defined in
23 subdivision (f) of Section 290.45, may make available information
24 concerning persons who are required to register pursuant to Section
25 290 to the public via an Internet Web site as specified in paragraph
26 (2).

27 (2) The law enforcement entity may make available by way of
28 an Internet Web site the information described in subdivision (c)
29 if it determines that the public disclosure of the information about
30 a specific offender by way of the entity's Internet Web site is
31 necessary to ensure the public safety based upon information
32 available to the entity concerning that specific offender.

33 (3) The information that may be provided pursuant to this
34 subdivision may include the information specified in subdivision
35 (b) of Section 290.45. However, that offender's address may not
36 be disclosed unless he or she is a person whose address is on the
37 Department of Justice's Internet Web site pursuant to subdivision
38 (b) or (c).

39 (h) For purposes of this section, "offense" includes the statutory
40 predecessors of that offense, or any offense committed in another

1 jurisdiction that, if committed or attempted to be committed in this
2 state, would have been punishable in this state as an offense listed
3 in subdivision (c) of Section 290.

4 (i) Notwithstanding Section 6254.5 of the Government Code,
5 disclosure of information pursuant to this section is not a waiver
6 of exemptions under Chapter 3.5 (commencing with Section 6250)
7 of Title 1 of Division 7 of the Government Code and does not
8 affect other statutory restrictions on disclosure in other situations.

9 (j) (1) Any person who uses information disclosed pursuant to
10 this section to commit a misdemeanor shall be subject to, in
11 addition to any other penalty or fine imposed, a fine of not less
12 than ten thousand dollars (\$10,000) and not more than fifty
13 thousand dollars (\$50,000).

14 (2) Any person who uses information disclosed pursuant to this
15 section to commit a felony shall be punished, in addition and
16 consecutive to any other punishment, by a five-year term of
17 imprisonment in the state prison.

18 (k) Any person who is required to register pursuant to Section
19 290 who enters an Internet Web site established pursuant to this
20 section shall be punished by a fine not exceeding one thousand
21 dollars (\$1,000), imprisonment in a county jail for a period not to
22 exceed six months, or by both that fine and imprisonment.

23 (l) (1) A person is authorized to use information disclosed
24 pursuant to this section only to protect a person at risk.

25 (2) Except as authorized under paragraph (1) or any other
26 provision of law, use of any information that is disclosed pursuant
27 to this section for purposes relating to any of the following is
28 prohibited:

- 29 (A) Health insurance.
- 30 (B) Insurance.
- 31 (C) Loans.
- 32 (D) Credit.
- 33 (E) Employment.
- 34 (F) Education, scholarships, or fellowships.
- 35 (G) Housing or accommodations.
- 36 (H) Benefits, privileges, or services provided by any business
37 establishment.

38 (3) This section shall not affect authorized access to, or use of,
39 information pursuant to, among other provisions, Sections 11105
40 and 11105.3, Section 8808 of the Family Code, Sections 777.5

1 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871
2 of the Health and Safety Code, and Section 432.7 of the Labor
3 Code.

4 (4) (A) Any use of information disclosed pursuant to this section
5 for purposes other than those provided by paragraph (1) or in
6 violation of paragraph (2) shall make the user liable for the actual
7 damages, and any amount that may be determined by a jury or a
8 court sitting without a jury, not exceeding three times the amount
9 of actual damage, and not less than two hundred fifty dollars
10 (\$250), and attorney's fees, exemplary damages, or a civil penalty
11 not exceeding twenty-five thousand dollars (\$25,000).

12 (B) Whenever there is reasonable cause to believe that any
13 person or group of persons is engaged in a pattern or practice of
14 misuse of the information available via an Internet Web site
15 established pursuant to this section in violation of paragraph (2),
16 the Attorney General, any district attorney, or city attorney, or any
17 person aggrieved by the misuse is authorized to bring a civil action
18 in the appropriate court requesting preventive relief, including an
19 application for a permanent or temporary injunction, restraining
20 order, or other order against the person or group of persons
21 responsible for the pattern or practice of misuse. The foregoing
22 remedies shall be independent of any other remedies or procedures
23 that may be available to an aggrieved party under other provisions
24 of law, including Part 2 (commencing with Section 43) of Division
25 1 of the Civil Code.

26 (m) The public notification provisions of this section are
27 applicable to every person described in this section, without regard
28 to when his or her crimes were committed or his or her duty to
29 register pursuant to Section 290 arose, and to every offense
30 described in this section, regardless of when it was committed.

31 (n) A designated law enforcement entity and its employees shall
32 be immune from liability for good faith conduct under this section.

33 (o) The Attorney General, in collaboration with local law
34 enforcement and others knowledgeable about sex offenders, shall
35 develop strategies to assist members of the public in understanding
36 and using publicly available information about registered sex
37 offenders to further public safety. These strategies may include,
38 but are not limited to, a hotline for community inquiries,
39 neighborhood and business guidelines for how to respond to

1 information posted on this Internet Web site, and any other resource
2 that promotes public education about these offenders.

3 ~~SEC. 14.~~

4 *SEC. 15.* Section 666 of the Penal Code is amended to read:

5 666. (a) ~~Except as provided in subdivision (b)~~*Notwithstanding*
6 *Section 490*, every person who, having been convicted three or
7 more times of petty theft, grand theft, auto theft under Section
8 10851 of the Vehicle Code, burglary, carjacking, robbery, or a
9 felony violation of Section 496 and having served a term therefor
10 in any penal institution or having been imprisoned therein as a
11 condition of probation for that offense, is subsequently convicted
12 of petty theft, then the person convicted of that subsequent offense
13 is punishable by imprisonment in the county jail not exceeding
14 one year, or in the state prison.

15 ~~(b) Notwithstanding subdivision (a), every person who has one~~
16 ~~qualifying conviction as specified in, and who is otherwise subject~~
17 ~~to, subdivision (a), who is required to register pursuant to the Sex~~
18 ~~Offender Registration Act, who has a prior serious or violent felony~~
19 ~~conviction as defined in subdivision (c) of Section 667.5 or~~
20 ~~subdivision (c) of Section 1192.7, or who has been sentenced under~~
21 ~~the three strikes law, is punishable by imprisonment in the county~~
22 ~~jail not exceeding one year, or in the state prison.~~

23 *(b) Notwithstanding Section 490, any person described in*
24 *paragraph (1) who, having been convicted of petty theft, grand*
25 *theft, auto theft under Section 10851 of the Vehicle Code, burglary,*
26 *carjacking, robbery, or a felony violation of Section 496, and*
27 *having served a term of imprisonment therefor in any penal*
28 *institution or having been imprisoned therein as a condition of*
29 *probation for that offense, who is subsequently convicted of petty*
30 *theft, is punishable by imprisonment in the county jail not*
31 *exceeding one year, or in the state prison.*

32 *(1) This subdivision shall apply to any person who is required*
33 *to register pursuant to the Sex Offender Registration Act, or who*
34 *has a prior violent or serious felony conviction, as specified in*
35 *subdivision (c) of Section 667.5 or subdivision (c) of Section*
36 *1192.7.*

37 *(2) This subdivision shall not be construed to preclude*
38 *prosecution or punishment pursuant to subdivisions (b) to (i),*
39 *inclusive, of Section 667, or Section 1170.12.*

1 ~~SEC. 15.~~

2 *SEC. 16.* Section 667.61 of the Penal Code is amended to read:

3 667.61. (a) Except as provided in subdivision (j), (l), or (m),
4 any person who is convicted of an offense specified in subdivision
5 (c) under one or more of the circumstances specified in subdivision
6 (d) or under two or more of the circumstances specified in
7 subdivision (e) shall be punished by imprisonment in the state
8 prison for 25 years to life.

9 (b) Except as provided in subdivision (a), (j), (l), or (m), any
10 person who is convicted of an offense specified in subdivision (c)
11 under one of the circumstances specified in subdivision (e) shall
12 be punished by imprisonment in the state prison for 15 years to
13 life.

14 (c) This section shall apply to any of the following offenses:

15 (1) Rape, in violation of paragraph (2) or (6) of subdivision (a)
16 of Section 261.

17 (2) Spousal rape, in violation of paragraph (1) or (4) of
18 subdivision (a) of Section 262.

19 (3) Rape, spousal rape, or sexual penetration, in concert, in
20 violation of Section 264.1.

21 (4) Lewd or lascivious act, in violation of subdivision (b) of
22 Section 288.

23 (5) Sexual penetration, in violation of subdivision (a) of Section
24 289.

25 (6) Sodomy, in violation of paragraph (2) or (3) of subdivision
26 (c), or subdivision (d), of Section 286.

27 (7) Oral copulation, in violation of paragraph (2) or (3) of
28 subdivision (c), or subdivision (d), of Section 288a.

29 (8) Lewd or lascivious act, in violation of subdivision (a) of
30 Section 288.

31 (9) Continuous sexual abuse of a child, in violation of Section
32 288.5.

33 (d) The following circumstances shall apply to the offenses
34 specified in subdivision (c):

35 (1) The defendant has been previously convicted of an offense
36 specified in subdivision (c), including an offense committed in
37 another jurisdiction that includes all of the elements of an offense
38 specified in subdivision (c).

39 (2) The defendant kidnapped the victim of the present offense
40 and the movement of the victim substantially increased the risk of

1 harm to the victim over and above that level of risk necessarily
2 inherent in the underlying offense in subdivision (c).

3 (3) The defendant inflicted aggravated mayhem or torture on
4 the victim or another person in the commission of the present
5 offense in violation of Section 205 or 206.

6 (4) The defendant committed the present offense during the
7 commission of a burglary of the first degree, as defined in
8 subdivision (a) of Section 460, with intent to commit an offense
9 specified in subdivision (c).

10 (5) The defendant committed the present offense in violation
11 of Section 264.1, subdivision (d) of Section 286, or subdivision
12 (d) of Section 288a, and, in the commission of that offense, any
13 person committed any act described in paragraph (2), (3), or (4)
14 of this subdivision.

15 (6) The defendant personally inflicted great bodily injury on
16 the victim or another person in the commission of the present
17 offense in violation of Section 12022.53, 12022.7, or 12022.8.

18 (7) The defendant personally inflicted bodily harm on the victim
19 who was under 14 years of age.

20 (e) The following circumstances shall apply to the offenses
21 specified in subdivision (c):

22 (1) Except as provided in paragraph (2) of subdivision (d), the
23 defendant kidnapped the victim of the present offense in violation
24 of Section 207, 209, or 209.5.

25 (2) Except as provided in paragraph (4) of subdivision (d), the
26 defendant committed the present offense during the commission
27 of a burglary in violation of Section 459.

28 (3) The defendant personally used a dangerous or deadly weapon
29 or a firearm in the commission of the present offense in violation
30 of Section 12022, 12022.3, 12022.5, or 12022.53.

31 (4) The defendant has been convicted in the present case or
32 cases of committing an offense specified in subdivision (c) against
33 more than one victim.

34 (5) The defendant engaged in the tying or binding of the victim
35 or another person in the commission of the present offense.

36 (6) The defendant administered a controlled substance to the
37 victim in the commission of the present offense in violation of
38 Section 12022.75.

39 (7) The defendant committed the present offense in violation
40 of Section 264.1, subdivision (d) of Section 286, or subdivision

1 (d) of Section 288a, and, in the commission of that offense, any
2 person committed any act described in paragraph (1), (2), (3), (5),
3 or (6) of this subdivision.

4 (f) If only the minimum number of circumstances specified in
5 subdivision (d) or (e) that are required for the punishment provided
6 in subdivision (a), (b), (j), (l), or (m) to apply have been pled and
7 proved, that circumstance or those circumstances shall be used as
8 the basis for imposing the term provided in subdivision (a), (b),
9 (j), (l), or (m) whichever is greater, rather than being used to impose
10 the punishment authorized under any other provision of law, unless
11 another provision of law provides for a greater penalty or the
12 punishment under another provision of law can be imposed in
13 addition to the punishment provided by this section. However, if
14 any additional circumstance or circumstances specified in
15 subdivision (d) or (e) have been pled and proved, the minimum
16 number of circumstances shall be used as the basis for imposing
17 the term provided in subdivision (a), (j), or (l) and any other
18 additional circumstance or circumstances shall be used to impose
19 any punishment or enhancement authorized under any other
20 provision of law.

21 (g) Notwithstanding Section 1385 or any other provision of law,
22 the court shall not strike any allegation, admission, or finding of
23 any of the circumstances specified in subdivision (d) or (e) for any
24 person who is subject to punishment under this section.

25 (h) Notwithstanding any other provision of law, probation shall
26 not be granted to, nor shall the execution or imposition of sentence
27 be suspended for, any person who is subject to punishment under
28 this section.

29 (i) For any offense specified in paragraphs (1) to (7), inclusive,
30 of subdivision (c), or in paragraphs (1) to (6), inclusive, of
31 subdivision (n), the court shall impose a consecutive sentence for
32 each offense that results in a conviction under this section if the
33 crimes involve separate victims or involve the same victim on
34 separate occasions as defined in subdivision (d) of Section 667.6.

35 (j) (1) Any person who is convicted of an offense specified in
36 subdivision (c), with the exception of a violation of subdivision
37 (a) of Section 288, upon a victim who is a child under 14 years of
38 age under one or more of the circumstances specified in subdivision
39 (d) or under two or more of the circumstances specified in
40 subdivision (e), shall be punished by imprisonment in the state

1 prison for life without the possibility of parole. Where the person
2 was under 18 years of age at the time of the offense, the person
3 shall be punished by imprisonment in the state prison for 25 years
4 to life.

5 (2) Any person who is convicted of an offense specified in
6 subdivision (c) under one of the circumstances specified in
7 subdivision (e), upon a victim who is a child under 14 years of
8 age, shall be punished by imprisonment in the state prison for 25
9 years to life.

10 (k) As used in this section, “bodily harm” means any substantial
11 physical injury resulting from the use of force that is more than
12 the force necessary to commit an offense specified in subdivision
13 (c).

14 (l) Any person who is convicted of an offense specified in
15 subdivision (n) under one or more of the circumstances specified
16 in subdivision (d) or under two or more of the circumstances
17 specified in subdivision (e), upon a victim who is a minor 14 years
18 of age or older shall be punished by imprisonment in the state
19 prison for life without the possibility of parole. If the person *who*
20 was convicted *was* under 18 years of age at the time of the offense,
21 he or she shall be punished by imprisonment in the state prison
22 for 25 years to life.

23 (m) Any person who is convicted of an offense specified in
24 subdivision (n) under one of the circumstances specified in
25 subdivision (e) against a minor 14 years of age or older shall be
26 punished by imprisonment in the state prison for 25 years to life.

27 (n) Subdivisions (l) and (m) shall apply to any of the following
28 offenses:

29 (1) Rape, in violation of paragraph (2) of subdivision (a) of
30 Section 261.

31 (2) Spousal rape, in violation of paragraph (1) of subdivision
32 (a) of Section 262.

33 (3) Rape, spousal rape, or sexual penetration, in concert, in
34 violation of Section 264.1.

35 (4) Sexual penetration, in violation of paragraph (1) of
36 subdivision (a) of Section 289.

37 (5) Sodomy, in violation of paragraph (2) of subdivision (c) of
38 Section 286, or in violation of subdivision (d) of Section 286.

(6) Oral copulation, in violation of paragraph (2) of subdivision (c) of Section 288a, or in violation of subdivision (d) of Section 288a.

(o) The penalties provided in this section shall apply only if the existence of any circumstance specified in subdivision (d) or (e) is alleged in the accusatory pleading pursuant to this section, and is either admitted by the defendant in open court or found to be true by the trier of fact.

~~SEC. 16.~~

SEC. 17. Section 1203.067 of the Penal Code is amended to read:

1203.067. (a) Notwithstanding any other law, before probation may be granted to any person convicted of a felony specified in Section 261, 262, 264.1, 286, 288, 288a, 288.5, or 289, who is eligible for probation, the court shall do all of the following:

(1) Order the defendant evaluated pursuant to Section 1203.03, or similar evaluation by the county probation department.

(2) Conduct a hearing at the time of sentencing to determine if probation of the defendant would pose a threat to the victim. The victim shall be notified of the hearing by the prosecuting attorney and given an opportunity to address the court.

(3) Order any psychiatrist or psychologist appointed pursuant to Section 288.1 to include a consideration of the threat to the victim and the defendant's potential for positive response to treatment in making his or her report to the court. Nothing in this section shall be construed to require the court to order an examination of the victim.

(b) On or after July 1, 2012, the terms of probation for persons placed on formal supervised probation for an offense that requires registration pursuant to Sections 290 to 290.023, inclusive, shall include all of the following:

(1) Persons placed on formal supervised probation prior to July 1, 2012, shall participate in an approved sex offender management program, following the standards developed pursuant to Section 9003, for a period of not less than one year or the remaining term of probation if it is less than one year. The length of the period in the program is to be determined by the certified sex offender management professional in consultation with the probation officer and as approved by the court.

(2) Persons placed on formal supervised probation on or after July 1, 2012, shall successfully complete a sex offender management program, following the standards developed pursuant to Section 9003, as a condition of release from probation. The length of the period in the program shall be not less than one year, up to the entire period of probation, as determined by the certified sex offender management professional in consultation with the probation officer and as approved by the court.

(3) Waiver of any privilege against self-incrimination and participation in polygraph examinations, which shall be part of the sex offender management program.

(4) Waiver of any psychotherapist-patient privilege to enable communication between the sex offender management professional and supervising probation officer, pursuant to Section 290.09.

(c) Any defendant ordered to be placed in an approved sex offender management program pursuant to subdivision (b) shall be responsible for paying the expense of his or her participation in the program as determined by the court. The court shall take into consideration the ability of the defendant to pay, and no defendant shall be denied probation because of his or her inability to pay.

~~SEC. 17.~~

SEC. 18. Section 2962 of the Penal Code is amended to read:

2962. As a condition of parole, a prisoner who meets the following criteria shall be required to be treated by the State Department of Mental Health, and the State Department of Mental Health shall provide the necessary treatment:

(a) The prisoner has a severe mental disorder that is not in remission or cannot be kept in remission without treatment.

The term “severe mental disorder” means an illness or disease or condition that substantially impairs the person’s thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely. The term “severe mental disorder” as used in this section does not include a personality or adjustment disorder, epilepsy, mental retardation or other developmental disabilities, or addiction to or abuse of intoxicating substances.

The term “remission” means a finding that the overt signs and symptoms of the severe mental disorder are controlled either by

1 psychotropic medication or psychosocial support. A person “cannot
2 be kept in remission without treatment” if during the year prior to
3 the question being before the Board of Prison Terms or a trial
4 court, he or she has been in remission and he or she has been
5 physically violent, except in self-defense, or he or she has made
6 a serious threat of substantial physical harm upon the person of
7 another so as to cause the target of the threat to reasonably fear
8 for his or her safety or the safety of his or her immediate family,
9 or he or she has intentionally caused property damage, or he or
10 she has not voluntarily followed the treatment plan. In determining
11 if a person has voluntarily followed the treatment plan, the standard
12 shall be whether the person has acted as a reasonable person would
13 in following the treatment plan.

14 (b) The severe mental disorder was one of the causes of or was
15 an aggravating factor in the commission of a crime for which the
16 prisoner was sentenced to prison.

17 (c) The prisoner has been in treatment for the severe mental
18 disorder for 90 days or more within the year prior to the prisoner’s
19 parole or release.

20 (d) (1) Prior to release on parole, the person in charge of treating
21 the prisoner and a practicing psychiatrist or psychologist from the
22 State Department of Mental Health have evaluated the prisoner at
23 a facility of the Department of Corrections, and a chief psychiatrist
24 of the Department of Corrections has certified to the Board of
25 Prison Terms that the prisoner has a severe mental disorder, that
26 the disorder is not in remission, or cannot be kept in remission
27 without treatment, that the severe mental disorder was one of the
28 causes or was an aggravating factor in the prisoner’s criminal
29 behavior, that the prisoner has been in treatment for the severe
30 mental disorder for 90 days or more within the year prior to his or
31 her parole release day, and that by reason of his or her severe
32 mental disorder the prisoner represents a substantial danger of
33 physical harm to others. For prisoners being treated by the State
34 Department of Mental Health pursuant to Section 2684, the
35 certification shall be by a chief psychiatrist of the Department of
36 Corrections, and the evaluation shall be done at a state hospital by
37 the person at the state hospital in charge of treating the prisoner
38 and a practicing psychiatrist or psychologist from the Department
39 of Corrections.

1 (2) If the professionals doing the evaluation pursuant to
2 paragraph (1) do not concur that (A) the prisoner has a severe
3 mental disorder, (B) that the disorder is not in remission or cannot
4 be kept in remission without treatment, or (C) that the severe
5 mental disorder was a cause of, or aggravated, the prisoner's
6 criminal behavior, and a chief psychiatrist has certified the prisoner
7 to the Board of Prison Terms pursuant to this paragraph, then the
8 Board of Prison Terms shall order a further examination by two
9 independent professionals, as provided for in Section 2978.

10 (3) If at least one of the independent professionals who evaluate
11 the prisoner pursuant to paragraph (2) concurs with the chief
12 psychiatrist's certification of the issues described in paragraph (2),
13 this subdivision shall be applicable to the prisoner. The
14 professionals appointed pursuant to Section 2978 shall inform the
15 prisoner that the purpose of their examination is not treatment but
16 to determine if the prisoner meets certain criteria to be involuntarily
17 treated as a mentally disordered offender. It is not required that
18 the prisoner appreciate or understand that information.

19 (e) The crime referred to in subdivision (b) meets both of the
20 following criteria:

21 (1) The defendant received a determinate sentence pursuant to
22 Section 1170 for the crime.

23 (2) The crime is one of the following:

24 (A) Voluntary manslaughter.

25 (B) Mayhem.

26 (C) Kidnapping in violation of Section 207.

27 (D) Any robbery wherein it was charged and proved that the
28 defendant personally used a deadly or dangerous weapon, as
29 provided in subdivision (b) of Section 12022, in the commission
30 of that robbery.

31 (E) Carjacking, as defined in subdivision (a) of Section 215, if
32 it is charged and proved that the defendant personally used a deadly
33 or dangerous weapon, as provided in subdivision (b) of Section
34 12022, in the commission of the carjacking.

35 (F) Rape, as defined in paragraph (2) or (6) of subdivision (a)
36 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section
37 262.

38 (G) Sodomy by force, violence, duress, menace, or fear of
39 immediate and unlawful bodily injury on the victim or another
40 person.

1 (H) Oral copulation by force, violence, duress, menace, or fear
2 of immediate and unlawful bodily injury on the victim or another
3 person.

4 (I) Lewd acts on a child under the age of 14 years in violation
5 of Section 288.

6 (J) Continuous sexual abuse in violation of Section 288.5.

7 (K) The offense described in subdivision (a) of Section 289
8 where the act was accomplished against the victim's will by force,
9 violence, duress, menace, or fear of immediate and unlawful bodily
10 injury on the victim or another person.

11 (L) Arson in violation of subdivision (a) of Section 451, or arson
12 in violation of any other provision of Section 451 or in violation
13 of Section 455 where the act posed a substantial danger of physical
14 harm to others.

15 (M) Any felony in which the defendant used a firearm which
16 use was charged and proved as provided in Section 12022.5,
17 12022.53, or 12022.55.

18 (N) A violation of Section 12308.

19 (O) Attempted murder.

20 (P) A crime not enumerated in subparagraphs (A) to (O),
21 inclusive, in which the prisoner used force or violence, or caused
22 serious bodily injury as defined in paragraph (4) of subdivision (f)
23 of Section 243.

24 (Q) A crime in which the perpetrator expressly or impliedly
25 threatened another with the use of force or violence likely to
26 produce substantial physical harm in such a manner that a
27 reasonable person would believe and expect that the force or
28 violence would be used. For purposes of this subparagraph,
29 substantial physical harm shall not require proof that the threatened
30 act was likely to cause great or serious bodily injury.

31 (f) As used in this chapter, "substantial danger of physical harm"
32 does not require proof of a recent overt act.

33 ~~SEC. 18.~~

34 *SEC. 19.* Section 3000 of the Penal Code is amended to read:

35 3000. (a) (1) The Legislature finds and declares that the period
36 immediately following incarceration is critical to successful
37 reintegration of the offender into society and to positive citizenship.
38 It is in the interest of public safety for the state to provide for the
39 effective supervision of and surveillance of parolees, including
40 the judicious use of revocation actions, and to provide educational,

1 vocational, family and personal counseling necessary to assist
2 parolees in the transition between imprisonment and discharge. A
3 sentence pursuant to Section 1168 or 1170 shall include a period
4 of parole, unless waived, or as otherwise provided in this article.

5 (2) The Legislature finds and declares that it is not the intent of
6 this section to diminish resources allocated to the Department of
7 Corrections and Rehabilitation for parole functions for which the
8 department is responsible. It is also not the intent of this section
9 to diminish the resources allocated to the Board of Parole Hearings
10 to execute its duties with respect to parole functions for which the
11 board is responsible.

12 (3) The Legislature finds and declares that diligent effort must
13 be made to ensure that parolees are held accountable for their
14 criminal behavior, including, but not limited to, the satisfaction of
15 restitution fines and orders.

16 (4) The parole period of any person found to be a sexually
17 violent predator shall be tolled until that person is found to no
18 longer be a sexually violent predator, at which time the period of
19 parole, or any remaining portion thereof, shall begin to run.

20 (b) Notwithstanding any provision to the contrary in Article 3
21 (commencing with Section 3040) of this chapter, the following
22 shall apply:

23 (1) In the case of any inmate sentenced under Section 1168, the
24 period of parole shall not exceed five years in the case of an inmate
25 imprisoned for any offense other than first or second degree murder
26 for which the inmate has received a life sentence, and shall not
27 exceed three years in the case of any other inmate, unless in either
28 case the parole authority for good cause waives parole and
29 discharges the inmate from custody of the department. This
30 subdivision shall also be applicable to inmates who committed
31 crimes prior to July 1, 1977, to the extent specified in Section
32 1170.2.

33 (2) At the expiration of a term of imprisonment of one year and
34 one day, or a term of imprisonment imposed pursuant to Section
35 1170 or at the expiration of a term reduced pursuant to Section
36 2931 or 2933, if applicable, the inmate shall be released on parole
37 for a period not exceeding three years, except that any inmate
38 sentenced for an offense specified in paragraph (3), (4), (5), (6),
39 (11), or (18) of subdivision (c) of Section 667.5 shall be released

1 on parole for a period not exceeding 10 years, unless a longer
2 period of parole is specified in Section 3000.1.

3 (3) Notwithstanding paragraphs (1) and (2), in the case of any
4 offense for which the inmate has received a life sentence pursuant
5 to subdivision (b) of Section 209, with the intent to commit a
6 specified sex offense, or Section 667.51, 667.61, or 667.71, the
7 period of parole shall be 10 years, unless a longer period of parole
8 is specified in Section 3000.1.

9 (4) (A) Notwithstanding paragraphs (1) to (3), inclusive, in the
10 case of a person convicted of and required to register as a sex
11 offender for the commission of an offense specified in Section
12 261, 262, 264.1, 286, 288a, paragraph (1) of subdivision (b) of
13 Section 288, Section 288.5, or 289, in which one or more of the
14 victims of the offense was a child under 14 years of age, the period
15 of parole shall be 20 years unless the board, for good cause,
16 determines that the person will be retained on parole. The board
17 shall make a written record of this determination and transmit a
18 copy of it to the parolee.

19 (B) In the event of a retention on parole, the parolee shall be
20 entitled to a review by the board each year thereafter.

21 (C) There shall be a hearing as provided in Sections 3041.5 and
22 3041.7 within 12 months of the date of any revocation of parole
23 to consider the release of the inmate on parole, and notwithstanding
24 the provisions of paragraph (2) of subdivision (b) of Section
25 3041.5, there shall be annual parole consideration hearings
26 thereafter, unless the person is released or otherwise ineligible for
27 parole release. The panel or board shall release the person within
28 one year of the date of the revocation unless it determines that the
29 circumstances and gravity of the parole violation are such that
30 consideration of the public safety requires a more lengthy period
31 of incarceration or unless there is a new prison commitment
32 following a conviction.

33 (D) The provisions of Section 3042 shall not apply to any
34 hearing held pursuant to this subdivision.

35 (5) The parole authority shall consider the request of any inmate
36 regarding the length of his or her parole and the conditions thereof.

37 (6) Upon successful completion of parole, or at the end of the
38 maximum statutory period of parole specified for the inmate under
39 paragraph (1), (2), (3), or (4), as the case may be, whichever is
40 earlier, the inmate shall be discharged from custody. The date of

1 the maximum statutory period of parole under this subdivision and
2 paragraphs (1), (2), (3), and (4) shall be computed from the date
3 of initial parole and shall be a period chronologically determined.
4 Time during which parole is suspended because the prisoner has
5 absconded or has been returned to custody as a parole violator
6 shall not be credited toward any period of parole unless the prisoner
7 is found not guilty of the parole violation. However, the period of
8 parole is subject to the following:

9 (A) Except as provided in Section 3064, in no case may a
10 prisoner subject to three years on parole be retained under parole
11 supervision or in custody for a period longer than four years from
12 the date of his or her initial parole.

13 (B) Except as provided in Section 3064, in no case may a
14 prisoner subject to five years on parole be retained under parole
15 supervision or in custody for a period longer than seven years from
16 the date of his or her initial parole.

17 (C) Except as provided in Section 3064, in no case may a
18 prisoner subject to 10 years on parole be retained under parole
19 supervision or in custody for a period longer than 15 years from
20 the date of his or her initial parole.

21 (7) The Department of Corrections and Rehabilitation shall meet
22 with each inmate at least 30 days prior to his or her good time
23 release date and shall provide, under guidelines specified by the
24 parole authority, the conditions of parole and the length of parole
25 up to the maximum period of time provided by law. The inmate
26 has the right to reconsideration of the length of parole and
27 conditions thereof by the parole authority. The Department of
28 Corrections and Rehabilitation or the Board of Parole Hearings
29 may impose as a condition of parole that a prisoner make payments
30 on the prisoner's outstanding restitution fines or orders imposed
31 pursuant to subdivision (a) or (c) of Section 13967 of the
32 Government Code, as operative prior to September 28, 1994, or
33 subdivision (b) or (f) of Section 1202.4.

34 (8) For purposes of this chapter, the Board of Parole Hearings
35 shall be considered the parole authority.

36 (9) The sole authority to issue warrants for the return to actual
37 custody of any state prisoner released on parole rests with the
38 Board of Parole Hearings, except for any escaped state prisoner
39 or any state prisoner released prior to his or her scheduled release

1 date who should be returned to custody, and Section 3060 shall
2 apply.

3 (10) It is the intent of the Legislature that efforts be made with
4 respect to persons who are subject to Section 290.011 who are on
5 parole to engage them in treatment.

6 ~~SEC. 19.~~

7 *SEC. 20.* Section 3000.1 of the Penal Code is amended to read:

8 3000.1. (a) (1) In the case of any inmate sentenced under
9 Section 1168 for any offense of first or second degree murder with
10 a maximum term of life imprisonment, the period of parole, if
11 parole is granted, shall be the remainder of the inmate's life.

12 (2) Notwithstanding any other provision of law, in the case of
13 any inmate sentenced to a life term under subdivision (b) of Section
14 209, if that offense was committed with the intent to commit a
15 specified sexual offense, Sections 269 and 288.7, subdivision (c)
16 of Section 667.51, Section 667.71 in which one or more of the
17 victims of the offense was a child under 14 years of age, or
18 subdivision (j), (l), or (m) of Section 667.61, the period of parole,
19 if parole is granted, shall be the remainder of the inmate's life.

20 (b) Notwithstanding any other provision of law, when any person
21 referred to in paragraph (1) of subdivision (a) has been released
22 on parole from the state prison, and has been on parole
23 continuously for seven years in the case of any person imprisoned
24 for first degree murder, and five years in the case of any person
25 imprisoned for second degree murder, since release from
26 confinement, the board shall, within 30 days, discharge that person
27 from parole, unless the board, for good cause, determines that the
28 person will be retained on parole. The board shall make a written
29 record of its determination and transmit a copy of it to the parolee.

30 (c) In the event of a retention on parole pursuant to subdivision
31 (b), the parolee shall be entitled to a review by the board each year
32 thereafter.

33 (d) There shall be a hearing as provided in Sections 3041.5 and
34 3041.7 within 12 months of the date of any revocation of parole
35 to consider the release of the inmate on parole and, notwithstanding
36 the provisions of paragraph (2) of subdivision (b) of Section
37 3041.5, there shall be annual parole consideration hearings
38 thereafter, unless the person is released or otherwise ineligible for
39 parole release. The panel or board shall release the person within
40 one year of the date of the revocation unless it determines that the

1 circumstances and gravity of the parole violation are such that
2 consideration of the public safety requires a more lengthy period
3 of incarceration or unless there is a new prison commitment
4 following a conviction.

5 (e) The provisions of Section 3042 shall not apply to any
6 hearing held pursuant to this section.

7 ~~SEC. 20.~~

8 *SEC. 21.* Section 3008 of the Penal Code is amended to read:

9 3008. (a) The Department of Corrections and Rehabilitation
10 shall ensure that all parolees under active supervision who are
11 deemed to pose a high risk to the public of committing sex crimes,
12 as determined by the State-Authorized Risk Assessment Tool for
13 Sex Offenders (SARATSO), as set forth in Sections 290.04 to
14 290.06, inclusive, are placed on intensive and specialized parole
15 supervision and are required to report frequently to designated
16 parole officers. The department may place any other parolee
17 convicted of an offense that requires him or her to register as a sex
18 offender pursuant to Section 290 who is on active supervision on
19 intensive and specialized supervision and require him or her to
20 report frequently to designated parole officers.

21 (b) The department shall develop and, at the discretion of the
22 secretary, and subject to an appropriation of the necessary funds,
23 may implement a plan for the implementation of relapse prevention
24 treatment programs, and the provision of other services deemed
25 necessary by the department, in conjunction with intensive and
26 specialized parole supervision, to reduce the recidivism of sex
27 offenders.

28 (c) The department shall develop control and containment
29 programming for sex offenders who have been deemed to pose a
30 high risk to the public of committing a sex crime, as determined
31 by the SARATSO, and shall require participation in appropriate
32 programming as a condition of parole.

33 (d) On or after July 1, 2012, the parole conditions of a person
34 released on parole for an offense that requires registration pursuant
35 to Sections 290 to 290.023, inclusive, shall include all of the
36 following:

37 (1) Persons placed on parole prior to July 1, 2012, shall
38 participate in an approved sex offender management program,
39 following the standards developed pursuant to Section 9003, for
40 a period of not less than one year or the remaining term of parole

1 if it is less than one year. The length of the period in the program
2 is to be determined by the certified sex offender management
3 professional in consultation with the parole officer and as approved
4 by the court.

5 (2) Persons placed on parole on or after July 1, 2012, shall
6 successfully complete a sex offender management program,
7 following the standards developed pursuant to Section 9003, as a
8 condition of parole. The length of the period in the program shall
9 be not less than one year, up to the entire period of parole, as
10 determined by the certified sex offender management professional
11 in consultation with the parole officer and as approved by the court.

12 (3) Waiver of any privilege against self-incrimination and
13 participation in polygraph examinations, which shall be part of the
14 sex offender management program.

15 (4) Waiver of any psychotherapist-patient privilege to enable
16 communication between the sex offender management professional
17 and supervising parole officer, pursuant to Section 290.09.

18 (e) Any defendant ordered to be placed in an approved sex
19 offender management treatment program pursuant to subdivision
20 (d) shall be responsible for paying the expense of his or her
21 participation in the program as determined by the court. The court
22 shall take into consideration the ability of the defendant to pay,
23 and no defendant shall be denied discharge onto parole because
24 of his or her inability to pay.

25 ~~SEC. 21.~~

26 *SEC. 22.* Section 3053.8 is added to the Penal Code, to read:

27 3053.8. (a) Notwithstanding any other provision of law, when
28 a person is released on parole after having served a term of
29 imprisonment for any of the offenses specified in subdivision (b)
30 in which one or more of the victims was under 14 years of age,
31 and for which registration is required pursuant to the Sex Offender
32 Registration Act, it shall be a condition of parole that the person
33 may not, during his or her period of parole, enter any park where
34 children regularly gather without the express permission of his or
35 her parole agent.

36 (b) Subdivision (a) shall apply to persons released on parole
37 after having served a term of imprisonment for an offense specified
38 in Section 261, 262, 264.1, 269, 286, 288a, paragraph (1) of
39 subdivision (b) of Section 288, 288.5, 288.7, 289, subdivision (c)

1 of Section 667.51, subdivision (j), (k), or (l) of Section 667.61, or
2 667.71.

3 ~~SEC. 22.~~

4 *SEC. 23.* Section 9003 is added to the Penal Code, to read:

5 9003. (a) On or before July 1, 2011, the board shall develop
6 and update standards for certification of sex offender management
7 professionals. All those professionals who enter into contracts with
8 a probation department or the Department of Corrections and
9 Rehabilitation to provide sex offender management programs and
10 risk assessments, pursuant to Section 290.09, shall be certified by
11 the board according to these standards. The standards shall be
12 published on the board's Internet Web site. Professionals may
13 apply to the board for certification on or after August 1, 2011.

14 ~~(1) The board shall require any person who applies for~~
15 ~~certification to provide sex offender management services pursuant~~
16 ~~to Section 290.09 to submit a complete set of his or her fingerprints.~~
17 ~~The board shall forward any such fingerprints received pursuant~~
18 ~~to paragraph (2), to the Department of Justice for use in conducting~~
19 ~~a state criminal history record check and for transmittal to the~~
20 ~~Federal Bureau of Investigation for a national criminal history~~
21 ~~record check.~~

22 ~~(2) The board shall require any person who applies for~~
23 ~~certification under this section to submit information relevant to~~
24 ~~the applicant's fitness to provide sex offender management~~
25 ~~services.~~

26 ~~(3) The board shall assess a fee to the applicant not to exceed~~
27 ~~one hundred twenty-five dollars (\$125) per application.~~

28 *(1) (A) The board shall submit to the Department of Justice*
29 *fingerprint images and related information required by the*
30 *Department of Justice of all sex offender management applicants,*
31 *as defined by subdivision (a), for the purposes of obtaining*
32 *information as to the existence and content of a record of state or*
33 *federal convictions and state or federal arrests and also*
34 *information as to the existence and content of a record of state*
35 *arrests or federal arrests for which the Department of Justice*
36 *establishes that the person is free on bail or on his or her own*
37 *recognizance pending trial or appeal.*

38 *(B) When received, the Department of Justice shall forward to*
39 *the Federal Bureau of Investigation requests for federal summary*
40 *criminal history information received pursuant to this section. The*

1 *Department of Justice shall review the information returned from*
2 *the Federal Bureau of Investigation and compile and disseminate*
3 *a response to the board.*

4 *(C) The Department of Justice shall provide a state and federal*
5 *response to the board pursuant to paragraph (1) of subdivision*
6 *(l) of Section 11105.*

7 *(D) The board shall request from the Department of Justice*
8 *subsequent arrest notification service, as provided pursuant to*
9 *Section 11105.2 of the Penal Code, for persons described in*
10 *subdivision (a).*

11 *(2) The board shall require any person who applies for*
12 *certification under this section to submit information relevant to*
13 *the applicant's fitness to provide sex offender management*
14 *services.*

15 *(3) The board shall assess a fee to the applicant not to exceed*
16 *one hundred eighty dollars (\$180) per application. The board shall*
17 *pay a fee to the Department of Justice sufficient to cover the cost*
18 *of processing the criminal background request specified in this*
19 *section.*

20 *(b) On or before July 1, 2011, the board shall develop and update*
21 *standards for certification of sex offender management programs,*
22 *which shall include treatment, as specified, and dynamic and future*
23 *violence risk assessments pursuant to Section 290.09. The standards*
24 *shall be published on the board's Internet Web site. All those*
25 *programs shall include polygraph examinations by a certified*
26 *polygraph examiner, which shall be conducted as needed during*
27 *the period that the offender is in the sex offender management*
28 *program. Only certified sex offender management professionals*
29 *whose programs meet the standards set by the board are eligible*
30 *to enter into contracts with probation and parole to provide sex*
31 *offender management programs pursuant to Section 290.09.*

32 *(c) On or before July 1, 2011, the board shall develop and update*
33 *standards for certification of polygraph examiners. The standards*
34 *shall be published on the board's Internet Web site.*

35 ~~SEC. 23.~~

36 *SEC. 24. Section 13887 of the Penal Code is amended to read:*

37 *13887. (a) Any county may establish and implement a sexual*
38 *assault felony enforcement (SAFE) team program pursuant to the*
39 *provisions of this chapter.*

1 (b) The Legislature finds and declares that identifying and
2 developing reliable and sustainable funding for SAFE teams
3 established by this chapter, including those established in rural
4 and regional areas, is critical for reducing sexual assaults in
5 California.

6 ~~SEC. 24.~~

7 *SEC. 25.* Section 18846.3 of the Revenue and Taxation Code
8 is amended to read:

9 18846.3. (a) (1) By September 1, 2006, and by September 1
10 of each subsequent calendar year that the California Sexual
11 Violence Victim Services Fund appears on a tax return, the
12 Franchise Tax Board shall do all of the following:

13 (A) Determine the minimum contribution amount required to
14 be received during the next calendar year for the fund to appear
15 on the tax return for the taxable year that includes that next calendar
16 year.

17 (B) Provide written notification to the California Coalition
18 Against Sexual Assault of the amount determined in subparagraph
19 (A).

20 (C) Determine whether the amount of contributions estimated
21 to be received during the calendar year will equal or exceed the
22 minimum contribution amount determined by the Franchise Tax
23 Board for the calendar year pursuant to subparagraph (A). The
24 Franchise Tax Board shall estimate the amount of contributions
25 to be received by using the actual amounts received and an estimate
26 of the contributions that will be received by the end of that calendar
27 year.

28 (2) If the Franchise Tax Board determines that the amount of
29 contributions estimated to be received during a calendar year will
30 not at least equal the minimum contribution amount for the calendar
31 year, this article is repealed with respect to taxable years beginning
32 on or after January 1 of that calendar year.

33 (3) For purposes of this section, the minimum contribution
34 amount for a calendar year means two hundred fifty thousand
35 dollars (\$250,000) for the 2007 calendar year or the adjusted
36 minimum contribution amount adjusted pursuant to subdivision
37 (b).

38 (b) For each calendar year, beginning with the 2008 calendar
39 year, the Franchise Tax Board shall adjust, on or before September

1 1 of that calendar year, the minimum contribution amount specified
2 in subdivision (a) as follows:

3 (1) The minimum contribution amount for the calendar year
4 shall be an amount equal to the product of the minimum
5 contribution amount for the prior calendar year multiplied by the
6 inflation factor adjustment as specified in paragraph (2) of
7 subdivision (h) of Section 17041, rounded off to the nearest dollar.

8 (2) The inflation factor adjustment used for the calendar year
9 shall be based on the figures for the percentage change in the
10 California Consumer Price Index received on or before August 1
11 of the calendar year pursuant to paragraph (1) of subdivision (h)
12 of Section 17041.

13 ~~SEC. 25.~~

14 *SEC. 26.* No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution for certain
16 costs that may be incurred by a local agency or school district
17 because, in that regard, this act creates a new crime or infraction,
18 eliminates a crime or infraction, or changes the penalty for a crime
19 or infraction, within the meaning of Section 17556 of the
20 Government Code, or changes the definition of a crime within the
21 meaning of Section 6 of Article XIII B of the California
22 Constitution.

23 However, if the Commission on State Mandates determines that
24 this act contains other costs mandated by the state, reimbursement
25 to local agencies and school districts for those costs shall be made
26 pursuant to Part 7 (commencing with Section 17500) of Division
27 4 of Title 2 of the Government Code.

28 ~~SEC. 26.~~

29 *SEC. 27.* The provisions of this act are severable. If any
30 provision of this act or its application is held invalid, that invalidity
31 shall not affect other provisions or applications that can be given
32 effect without the invalid provision or application.